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No. 922

Office Supreme Court, U.S.
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JOHN T. FEY, Clerk

United States Court of Appeals

For the Second Circuit

No. 24518

HELLENIC LINES, LTD., as Owner of the s/s HELLENIC BEACH,

Libelant-Appellant,

against

s/s EXMOUTH, her engines, boilers, etc., and AMERICAN EXPORT LINES, INC.,

Respondent-Appellee,

AMERICAN EXPORT LINES, INC., as Owner of the s/s EXMOUTH,

Libelant-Appellee,

against

s/s HELLENIC BEACH, her engines, boilers, etc., and HELLENIC LINES, LTD.,

Respondent-Appellant.

APPENDIX FOR RESPONDENT-LIBELANT-APPELLEE-AMERICAN EXPORT LINES, INC.

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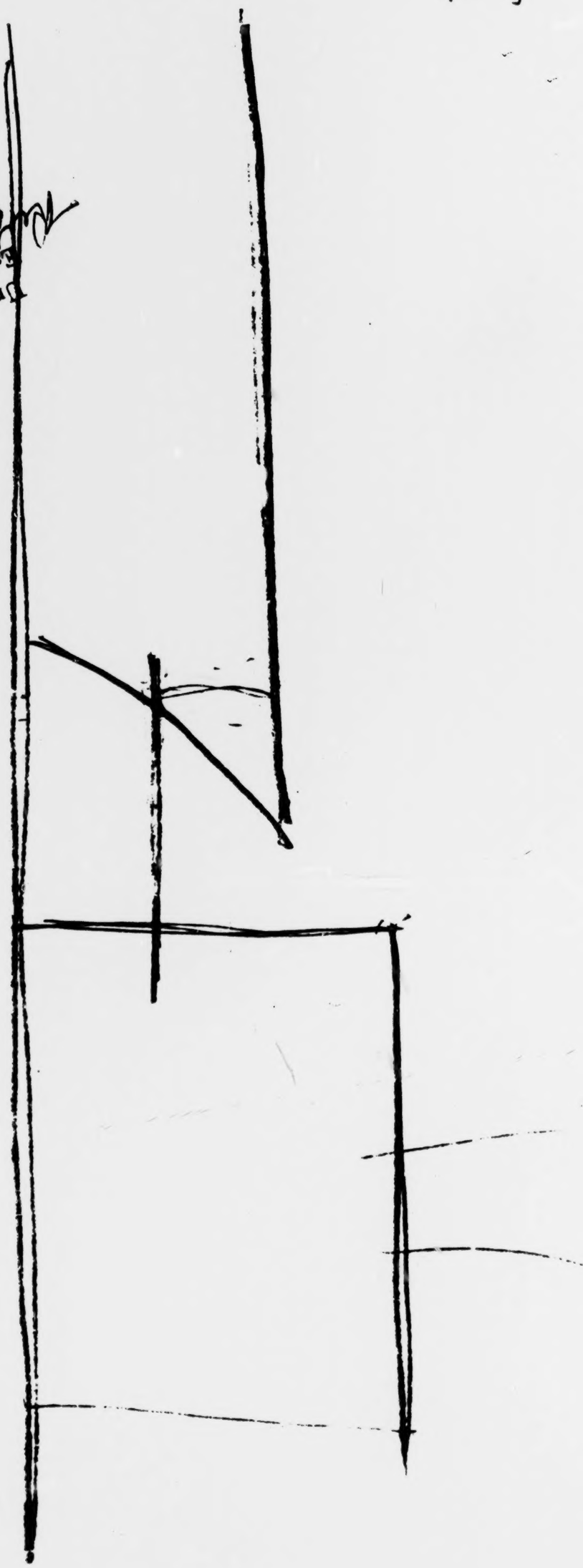
Respondent's Exhibit A

Sketch shown to Captain Macris of Hellenic Beach.

(See opposite ☛)

RESPONDENT'S EXHIBIT A

(p.3a)

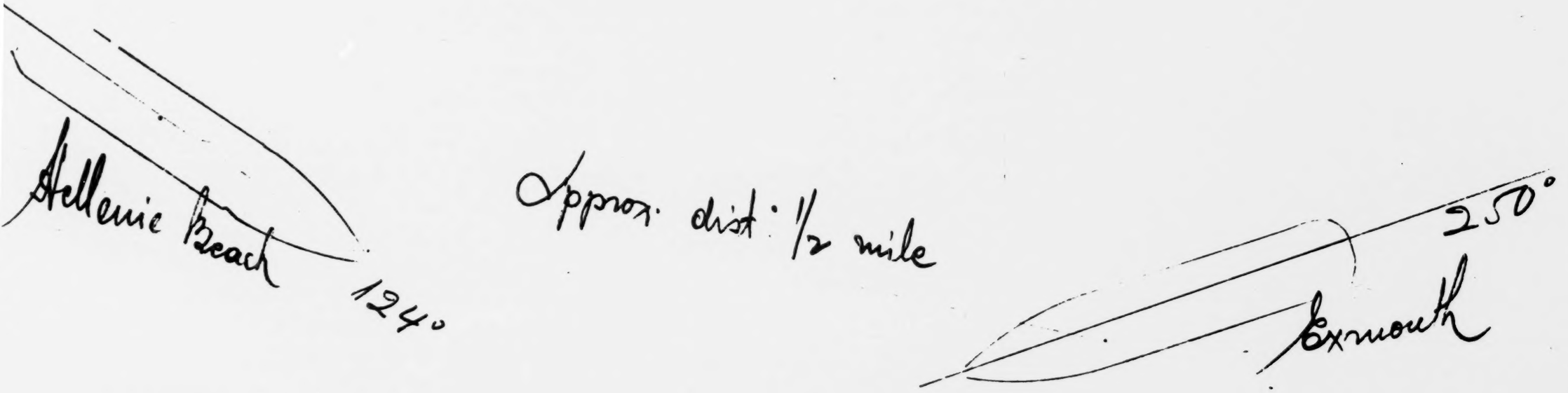


A-1944
1944 &c
United States District Court
Eastern District of New York
Exhibit A in evidence
Date 1/4/53
By Deputy Clerk

Respondent's Exhibit C

Sketch by Captain Macris.

(See opposite ☞)



RESPONDENT'S EXHIBIT C
(P.5a)

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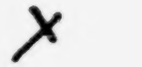
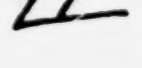
EXHIBIT 4
6/14/49 W.H.

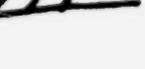
Approximate positions and bearing both vessels when first one blast signal blown

RESPONDENT'S EXHIBIT D

1.  STOP

2. SLOW AHEAD

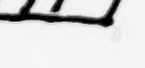
3.  HALF SPEED AHEAD

4.  FULL SPEED AHEAD

5. SLOW ASTERN

6. HALF SPEED ASTERN

7. FULL SPEED ASTERN

8. 

Respondent's Exhibit E

BERNARD G. LEIMERS, called as a witness on behalf of the defendant American Export Lines, having been duly sworn, testified as follows:

Direct examination by Mr. Estabrook:

Q. Mr. Leimers, are you a licensed officer of the United States Merchant Marine? A. Yes, sir.

Q. What license do you hold? A. Master.

Q. How long have you held a Master's license? A. 1945.

Q. And is that unlimited, any ocean? A. Unlimited.

Q. By whom are you employed? A. The American Export Lines.

Q. Are you now on vacation? A. Yes.

Q. What was your last position with American Export Lines? A. Chief mate.

Q. On what ship? A. The Exilona.

Q. How long have you been going to sea? A. 1929.

Q. How long have you had a license? A. 1939.

Q. How long have you sailed for American Export Lines? A. On a license, since '41.

Q. Before that you sailed as a sailor? A. Yes.

Q. For how long? A. About 3 years.

Q. For American Export Lines? A. Yes.

Q. Mr. Leimers, were you chief officer of the Exmouth on June 5, 1949? A. I think I was.

Q. You had been second officer, had you not? A. That's right.

Q. And you were chief officer for the run down the coast; is that correct? A. That is correct.

Q. At that time did you have a chief officer's license? A. I had a master's license.

Q. You left New York about what time, do you remember? A. No, not offhand; what time, no.

Respondent's Exhibit E

Q. Was it in the early afternoon? A. It was sometime in the afternoon, yes.

Q. And do you recall anchoring because of fog off Overfalls Lightship? A. Yes, we did anchor.

Q. In the evening? A. That's right.

Q. By the way, as chief officer, did you stand a watch on the bridge? A. No.

Q. Where were you when the ship anchored? A. On the bow.

Q. Were you in charge of letting go the anchor? A. In charge.

Q. What did you do after you anchored in the evening of June 4th? A. After we anchored?

Q. Yes. A. Why, I don't recall.

Q. Do you remember whether you went to bed or went on the bridge or went to the messroom? A. The chances are I went to bed.

Q. Now, in the early morning of June 5th, were you awakened to stand by the anchor? A. You mean when the ship was under way?

Q. No, before the ship got under way. You anchored, did you not, on the evening of June 4th? A. That's right, yes.

Q. And isn't it true that in the early morning of June 5th the ship got under way from the vicinity of Overfalls Lightship? A. That's right.

Q. And were you awakened to stand by the anchor? A. I had to go up there to heave up the anchor, yes.

Q. Who was up there with you; do you remember? A. Well, I had the boatswain up there.

Q. Did you have some sailors? A. Yes, there was a lookout was up there. I don't recall who else.

Q. Do you remember what the weather was like? A. Well, it had been foggy. That is why we anchored.

Q. And was the fog clearing? A. It was lifting, yes; that is why we got under way.

Respondent's Exhibit D

Engine room bell book symbols.

(See opposite ☛)

Respondent's Exhibit E

Q. How far could you see then? A. Oh, maybe 3 miles, 1 to 3 miles, I don't know.

Q. Did you have a watch up there, Mr. Leimers? A. No, sir.

Q. Now, after the ship got under way, did you see the lights of another vessel, which later turned out to be the Hellenic Beach? A. Yes, I did.

Q. What lights did you see? A. Well, I saw the port running light, that is, the red light, and the masthead light, and the range light.

Q. Where did the Hellenic Beach bear from the Exmouth? A. Approximately 4 points on the starboard bow.

Q. Four points is how many degrees? A. 45.

Q. And how far away was the Hellenic Beach? A. Oh, maybe 3 miles. That is a guess.

Q. Did you make any report? A. Yes, I reported the light to the bridge.

Q. How did you report it? A. By telephone.

Q. Did you get an answer? A. Yes, sir.

Q. Do you know whom you reported it to? A. The third officer.

Q. And is his name Giffin? A. That's right.

Q. At this time, where were you standing on the Exmouth? A. I was on the bow.

Q. What course was the Exmouth steering? A. Well, I don't know the exact course, but she was headed in towards the pilot station.

Q. Do you have a compass on the bow? A. No.

Q. Do you have any way of accurately determining the course on the bow? A. No.

Q. Did you pass the lightship, Overfalls Lightship? A. Yes.

Q. On which side? A. The lightship was on our starboard side.

Q. And how far off? A. About ¼ mile, ½ mile.

Respondent's Exhibit E

Q. That is your best estimate? A. It is my best estimate. I don't recollect.

The Court: You say about ¼ of a mile?
The Witness: About ¼ of a mile.

Q. As you passed the lightship, did you see the Hellenic Beach, or the lights of the ship which later turned out to be the Hellenic Beach? A. That was after we passed, yes.

Q. You saw them after you passed the lightship, not before? A. As far as I recall. I am not certain.

Q. You saw them when you thought you were about 3 miles off; is that correct? A. That is what I thought, yes.

Q. And you reported that to the— A. Bridge.

Q. —bridge. Now, how many times did you report that to the bridge? A. Once.

Q. After you passed the lightship, the lights were bearing about 4 points to the bow, were they, same lights? A. Yes.

Q. Did you notice any change in the bearing of those lights? A. No, I didn't. That is, it is hard for me to judge whether, from the bow, whether there is any change or not.

Q. What is the reason for that, sir? A. Well, being up there, you have nothing to orient yourself with.

Q. Now, describe what happened, in your own words, after you passed the lightship abeam. A. Will you repeat that, please?

Q. Will you describe, in your own words, what happened after you passed the lightship abeam? A. Well, at the time of picking up that light, I reported to the bridge. Well, then, there was nothing else that I could do there but to stand by until—

Q. You stood by to let go the anchor, if necessary? A. If necessary, yes.

Respondent's Exhibit E

Q. Did the bearing of the light change? A. No, not appreciably, not to my knowledge.

Q. Did the course of the vessel change, of the Hellenic Beach, or the vessel that afterwards turned out to be the Hellenic Beach? A. That I couldn't say.

Q. Did you hear any whistle signals? A. Not to my knowledge, I don't recall hearing any.

Q. Does that mean—well, let's first of all take the Exmouth; did you hear any whistle signals from the Exmouth? A. No, not to my knowledge.

Q. Did you hear any whistle signals from the Hellenic Beach? A. No.

Q. Where were you at the moment of the collision? A. I was still at the bow.

Q. At the moment of collision, what were you doing? Were you holding on or were you hanging on to the rail or the anchor chain? A. No, I was crouched down, because I saw we were going to have a collision, so it knocked me off my feet a little bit.

Q. Btu at the moment just before the collision, which way were you looking? A. At the moment of collision?

Q. Yes. A. I was looking at the ship, the Hellenic Beach.

Q. Where was the Hellenic Beach? A. Well, she was approaching us on the starboard side.

Q. And at what angle? A. Well, about 90 degrees, I should say.

The Court: About a right angle, wasn't it?
The Witness: About a right angle, yes, sir.

Q. Would you definitely state, sir, that there was no whistle signal blown at the moment of collision? A. No, I wouldn't state definitely.

Q. Would you definitely say there was none? A. Because during the confusion there, there may—I didn't pay any attention to—

Respondent's Exhibit E

Q. Would you definitely say there were no whistle signals blown up to about 15 seconds before the collision? A. I couldn't say.

Q. You don't remember hearing any? A. No.

Q. What did you do after the collision? A. Well, I went midships as soon as the collision, and there I met the bosun there. I sent him below just a few minutes, just a few minutes before that, and he was—had Mr. Rivera.

Q. And do you recognize Mr. Rivera here in court? A. Yes, I do.

Q. Where did you meet them? A. Right the forward end of the starboard alleyway.

Q. Then what did you do? A. Well, first I went to check to see that the purser was coming down to give aid to the injured.

Q. Was the purser also a pharmacist's mate? A. Yes.

Q. Is he in charge of the ship's first-aid kit? A. That's right.

Q. Then what did you do? A. Well, I took a look at the damage.

Q. Where was the damage? A. In the—well, the first part was evident in the messroom.

Q. Yes, then what did you do? A. Then I checked with the chief engineer to see if everything was all right down below

Q. Yes, was everything all right? A. Yes.

Q. Were the lights on or off? A. Well, it had gone off, but they brought them back on again. It was just momentarily.

Q. Then what did you do? A. Well, that is pretty hard to say. One thing, I had the cadets taking soundings; to lower the boats down to the rail; then I got orders from the bridge to anchor the ship. I anchored the ship; sounded the holds. The engineer started transferring fuel

and water to take the list off the ship. It listed over on its side, to bring the damage out of the water.

Q. Did you see Mr. Rivera? A. I beg your pardon?

Q. Did you see Mr. Rivera after you called for the purser? A. Yes, I saw the purser was taking care of him and I saw him just before they put him ashore.

Q. Was the purser competent, in your opinion? A. Very so, very much so.

Q. Did you make any suggestions to the purser as to how he should take care of Mr. Rivera? A. Well, I didn't —the only thing I did was tell him to give him a shot of morphine and pin an envelope on him so that the doctor who took charge of him later on would know that he had already had some.

Q. Did you observe where Mr. Rivera was? Was he on deck or in his room? A. No, we had him on a stretcher.

Q. And where was the stretcher, on deck? A. Yes.

Q. In your opinion, was that the proper place to have the stretcher? A. At that time, yes.

Q. What is your reason for saying that? A. Well, there was some question at the time whether we would have to abandon ship. If we had to abandon ship, we would have him in a position to lower him over the side.

Q. You say later on Mr. Rivera was removed from the ship? A. Yes, sir.

Q. How was he removed? A. He was taken off by the Coast Guard.

Q. Were you present at that time? A. Not at the actual lowering, no.

Q. Did you speak to the Coast Guard officer when he came on board? A. Yes.

Q. Did you make arrangements for Mr. Rivera to be taken to the hospital? A. Well, the Coast Guard took complete charge.

Q. Did you tell the Coast Guard that he was hurt? A. Yes.

Respondent's Exhibit E

Q. Did the Coast Guard tell you they would take him to the hospital? A. Yes, sir.

Q. In your opinion, was that the proper thing to do? A. Yes, sir.

Q. Who else was taken ashore at that time? A. The bosun.

Q. Did you pin an envelope to Mr. Rivera, indicating that he had had morphine? A. Yes—that is, the purser did it.

Q. You saw it was done? A. Well, I am almost certain he did it. I am not positive.

Q. You told him to do it? A. Yes.

Q. In your opinion, could anything more have been done for Mr. Rivera on board after the accident? A. No, just to ease his pain. That is the only thing we could do.

Q. And be sure he got to the hospital? A. Yes.

Q. Now during this time—by the way, did you make any entries in the ship's logs, as chief officer? A. Not personally, no.

Q. And you don't make any entries in the bell books, do you? A. No.

Q. Do you personally know of your own knowledge what orders were given to the wheel or to the engines of the Exmouth? A. No.

Q. How long did you stay anchored, do you remember? A. You mean after the collision?

Q. Yes. A. I think it was some time the next morning when we got orders, that is, that morning we got orders from New York to proceed to New York.

Q. Now, from the time you were called up on the bow to raise the anchor, until the collision, had you seen the master, Captain Ecklund? A. No, I didn't see him, no. He gave the orders, though.

Q. Well, did he give them to you personally, or through the third mate? A. Well, I was down on the boat deck at

the time and they shouted down from the bridge. I don't know who it was.

Q. Did you see the master after the collision? A. Yes.

Q. Where did you see him? A. Well, I—I don't recall where I saw him, but I—

Q. Do you recall seeing him at any particular time and place after the collision? A. Well, I saw him in the chief engineer's room.

Q. And do you know about what time that was? A. No, I don't.

Q. What was the master doing? A. I think he was using the telephone in there, I don't know.

Q. Did you observe his personal appearance? A. I beg your pardon?

Q. Did you observe his personal appearance? A. Well, he seemed a little tired, dazed.

Q. Did he appear to you to be intoxicated? A. No.

Q. Did you smell liquor on his breath? A. No.

Q. When did you next see the master, do you recall? A. No, I don't recall.

Q. Did you see him about 6 o'clock in the ship's office, in the morning; do you recall that? A. Yes, I saw him there.

Q. How did he appear at that time? A. Oh, I don't recall his appearance.

Q. Well, was he—did he to be alert? A. Well—I didn't see anything wrong with him.

Q. Was he tired? A. Well, I imagine he was pretty tired, yes.

Q. Did he appear to be dazed at all? A. Well, slightly, yes.

Q. Did you smell any liquor on his breath? A. No.

Q. What did you do in the ship's office about 6 in the morning? A. If I recall, we put some log entries, made some log entries.

Q. Did you make any? A. Not personally.

Respondent's Exhibit E

Q. What? A. Not personally, no.

Q. Who made them? A. I think the purser wrote them in. I am not sure. I couldn't say.

Q. You think the purser wrote something down? A. I am not sure.

Q. Before today, when was the last time you saw me or any member of my office? A. In June of '49.

Q. And have you discussed the collision with me or any person in my office from that time until today? A. No.

Mr. Estabrook: No further questions.

Cross-examination by Mr. Dow:

Q. Mr. Leimers, right immediately after the collision, didn't you testify before the Coast Guard hearing? A. Yes, I testified.

Q. And that testimony was under oath? A. That's right.

Q. On the question of drinking, would this refresh your recollection:—this is your testimony June 8, three days after the collision.

Mr. Estabrook: Will you give me the page, please, Mr. Dow?

Mr. Dow: Yes, page 229, first one.

Q. (Reading) "Was there any occasion to you that he had been drinking?"

The Court: "Was there any occasion to you"?

Mr. Dow: That is the way it comes out, your Honor. It is probably a stenographic error.

The Court: Probably "Was there any indication or evidence?"

Mr. Dow: Yes.

Respondent's Exhibit E

Q. Well, "Was there any indication to you that he had been drinking? A. Well, he may have had a drink or two.

"Q. Did he appear that way to you? A. Yes, he did."

Now, a little later in the same examination, the following question appears, on page 236:

"Q. I think you told us that the master appeared to have been drinking at the conference at 6 o'clock; is that correct? Did he appear any different to you when you first saw him in the chief engineer's room half-past two? A. No.

"Q. He was in the same approximate condition? A. Approximately, yes."

Do you remember that?

> The Court: I didn't hear the answer. Did you ask him a question?
>
> Mr. Dow: I asked him if he remembered that, and there is no answer.
>
> The Court: Yes. The question is whether you remember those questions having been put to you on June 8, 1949, at the Coast Guard hearing, and having given those answers to the questions so propounded?
>
> The Witness: Yes, I answered those questions at the Coast Guard hearing.

Q. You have testified here on direct examination that after you rounded the lightvessel you were about a quarter to half a mile away from her, that you saw a ship, red light and all, on your starboard side, about three miles away; is that correct? A. That's right.

Q. And she stayed on your starboard side? A. That's right.

Q. And you continued, as far as you know, straight ahead until you ran across her bow; is that right? A. I don't know. I couldn't tell you what course she was on or what she did.

Respondent's Exhibit E

Q. But the relative bearings of the two ships didn't change? A. Relative bearings were that.

Q. Now, at the time you rounded the lightvessel, at the time you swung around and rounded the lightvessel—and I show you a little drawing here. Let's assume this is the lightship—you were a quarter to a half mile off; right? A. As far as I can recall.

Q. And the Hellenic Beach was three miles away? A. Approximately. That is just an estimate.

Q. Now, the pilot vessel lay between the lightship and the Hellenic Beach, further north, didn't it? A. Yes, I think it did.

Q. You had lots of room in there, didn't you, at that time? A. Well, I didn't observe it from up there, in that respect.

Q. Well, is the answer yes or no? A. Well, I guess there is room enough to maneuver around. I don't—

Q. Well, yes or no, Mr. Leimers. Can you answer yes or no? A. I guess.

The Court: Guess what?

The Witness: I guess there was quite a bit of room there, yes.

Q. You are pretty sure of it, aren't you, Mr. Leimers? A. I beg your pardon?

Q. You are pretty sure there was, aren't you? A. No, I am not certain. I couldn't observe that all from the bridge, I mean, from the bow, because I was up there most—

Q. Did you see the master close enough to talk with him, from the time he was called, when the fog lifted it around 20 minutes after one in the morning, did you see him to talk to him, until after the collision? A. No.

Q. So his condition, alcoholically speaking, from 1.20—

Mr. Estabrook: I object to that remark.

Respondent's Exhibit E

Q. —from 1.20, until after the collision, you would have no active knowledge of it?

The Court: Don't answer the question.
The objection is sustained as to form.

Q. You wouldn't know then, would you, Mr. Leimers, of your own knowledge, the captain's condition between 1.20 a. m. and until sometime after the collision? A. All I know is that was he was on the bridge.

Q. No, but you didn't know his physical condition, did you? A. I knew he was on the bridge, yes.

Q. Did you know his physical condition during that time? A. Well, I didn't see him, no, because I went up on the bow immediately on being called.

Q. Well, just try to answer my questions as close as you can and we will save a little time. Did you know his condition between 1.20 and sometime after 2 o'clock? A. I didn't see him, no.

Q. So the answers you gave at the Coast Guard on his condition pertain to after the collision, is that right, rather than before? A. Well, yes, I wouldn't—I didn't see him before it.

Q. Yes. Now, did you get, aside from the order to anchor the ship, which you said somebody hollered from the bridge, around 3 o'clock, did you get any order from the master, from the time of the collision, shortly after 2, until sometime after 6.00 a. m.? A. I don't recall any.

Q. This collision was a rather serious one, wasn't it? A. Yes.

Q. So that except for the order to anchor, which you say came somewhere off the bridge— A. From the master.

Q. I think you said you were on the boat deck at the time; did you ever see the master between the collision and 6 o'clock? A. Yes.

Q. Whereabouts were you then? A. Well, I saw him once in the chief engineer's room.

Respondent's Exhibit E

Q. What time was that? A. I don't remember.

Q. Was it shortly after the collision, or shortly before ? A. Yes, shortly after.

Q. What was he doing there and what were you doing? A. I don't know.

Q. Well now, you mean you don't know what you were doing, but—or you don't know what he was doing? A. No. I was using the telephone in the chief engineer's room.

Q. Any idea what the skipper was doing there? A. No; perhaps doing the same thing.

Q. What? A. Perhaps wanted to see the chief engineer. That would be the logical conclusion.

Q. He was down in the engine room, wasn't he? A. Yes.

Q. Well, when you came in at that time, did you find him there? A. The captain was in there, yes.

Q. What was he doing? A. I don't know.

Q. Well, I mean— A. I didn't ask him.

Q. Was he standing there, was he lying in the chief engineer's bunk? A. No, he was standing by the telephone.

Q. Had he been using it? A. I don't know.

Q. Well, you just had a very serious collision, and your general alarm? A. All I can do is assume he was going to call the chief engineer. He perhaps came down here to see him, thinking that he might be there.

Q. This was a rather serious time, wasn't it? A. Yes, it was.

Q. For you both? A. Yes.

Q. You just had a very serious collision; right? A. Yes.

Q. You weren't certain of the condition of your ship yet, were you? A. That is what I was calling the chief engineer for.

Q. To find out? A. How his plant was, yes.

Q. That's right; and as far as you know, the captain didn't know the condition of the ship either; is that right? A. I don't know.

Respondent's Exhibit E

Q. Well, didn't you talk together at that time? A. Yes, I spoke to him.

Q. Well, what did he say to you and what did you say to him? A. I don't recall.

Q. Sure? A. I don't recall.

Q. You don't even recall what you talked about? A. No.

Q. Well, you weren't telling funny stories, were you? A. No, that is for sure.

Q. But you don't remember—did the captain give you any orders at that time? A. No.

Q. Well, from your testimony I read a few moments ago, "Did he appear any different to you than when you saw him in the chief engineer's room at half-past two?" The answer was "No." Mr. Leimers, there wasn't any point in talking to the captain then, was there? A. I beg your pardon?

Q. There wasn't any point in you and the captain having any conversation then, was there?

Mr. Estabrook: I object to the question.

The Court: I will allow the question.

A. Well, I spoke to him. Naturally there is a point, but I don't recall just exactly what I said. That is three years ago.

Q. But you would have recalled it much better on the 8th of June 1949, wouldn't you, three years ago? A. I suppose I would have.

Q. Now, immediaetly after the collision, which on your ship's time was 2.05, did your vessel, to your knowledge, send any messages to anybody immediately afterward, either the Coast Guard— A. Yes.

Q. She did, and to whom and when? A. We sent a message to the port captain in New York; Coast Guard was notified. I don't know what time.

Q. Well, that is what I am trying to get at. Didn't the radio operator come to you after the collision and tell you

that he had been trying to get the captain to send a message to the Coast Guard, that the purser had seen him about the injured man, and that the old man wouldn't send one out, and kept saying, "No, let's wait and see"? Didn't he tell you that? A. I don't recall.

Q. That was Mr. Roos, the radio operator? A. Yes, I know him.

Q. He was a good man, wasn't he? A. As far as I know.

Q. You don't recall speaking to the radio operator on at least two occasions about that? A. Yes, I spoke to him, certainly.

Q. What? A. As we sent the message.

Q. Yes. Eventually you authorized the message, didn't you? A. I have got the okay from the captain. We wrote the message and he okayed it.

Q. Well now, didn't you just tell us that from the time you saw the captain in the chief engineer's room, at 2:30, you never saw him until six o'clock? Didn't you just tell us that? A. I don't know what time it was.

Q. As a matter of fact, the radio operator couldn't get an answer out of the captain, could he? A. I don't know.

Q. Well, he told you that, didn't he? Let me see if I can refresh your recollection. Didn't Mr. Roos tell you that he had said to the captain—

Mr. Estabrook: What page is that, Mr. Dow?

Mr. Dow: 240.

Q. (Reading) "Captain, you had better notify the Coast Guard. It is the proper thing to do." And he said, "No, let's see what happens." A. That I don't know.

Q. Now, you testified that was four minutes after the collision—

Mr. Estabrook: Your Honor, I move that that be stricken out and the jury be instructed to disre-

gard it. Mr. Dow is not reading from any testimony of the witness.

Mr. Dow: I am, page 240.

Mr. Estabrook: But from testimony of the radio operator.

Mr. Dow: Of course, later on the radio operator testified he told this man these things.

The Court: The motion to strike is granted, but the objection should have been made earlier.

Mr. Estabrook: Yes, your Honor, I tried to get it, but Mr. Dow read it to me.

The Court: Please disregard it. It is a hearsay statement.

Mr. Estabrook: I respectfully move for a mistrial.

The Court: Motion denied. Your place was to object at the proper time. The jury will please disregard the question and the answer which was referred to just a moment ago, which relates to the radio operator, who is not on the witness stand.

Mr. Dow: On page 243—

The Court: Whose testimony are you now reading from?

Mr. Dow: This is the testimony of the radio operator concerning the chief mate, where he ties up—

Mr. Estabrook: I object to this.

Mr. Dow: —where he ties up previous conversations.

The Court: Now, please don't make any statements, Mr. Dow.

Mr. Estabrook: I again move for a mistrial, your Honor.

The Court: Would you allow me to finish my sentence, sir?

Mr. Estabrook: Excuse me.

Respondent's Exhibit E

The Court: Put a question, and if opposing counsel has any objection, please wait until I rule on it.

Mr. Dow: Very well.

Let me see if I can do it without reading it here.

The Court: I tell you now that I will not permit any questions as to alleged conversations between the radio operator and the captain, so please do not ask any.

Now, if you have any testimony there given by this witness, which you say contradicts his present testimony or may serve to refresh his recollection, you may put those questions.

Mr. Dow: Yes, sir.

Q. You went down in one of the boats, didn't you, Mr. Leimers? A. No, sir.

Q. You didn't? A. No, sir.

Q. Well, you went down to the boats on the boat deck then, didn't you? A. Supervise the launching, yes.

Q. And do you remember the radio operator coming up and speaking to you at that time? A. No, I don't: I don't recall.

Q. Do you recall the radio operator asking you to urge the master to send some message out, and you telling him that you would do it; do you remember that? A. Well, we sent the message. The point is, the message was sent.

Q. Yes, that's right, but it took quite a bit of doing, didn't it, Mr. Leimers? A. Well, I wouldn't say that.

Q. The message—well, Mr. Leimers, do you know the time that message finally went out? A. No, I don't.

Q. Have you any way of finding that? A. No, I haven't.

Q. It wasn't done right away, was it? A. Well, I don't —not exactly right away, no, that is—

Mr. Dow: Let me have your logbook, please, Mr. Estabrook.

Respondent's Exhibit E

Q. (Handing) Look in here, Mr. Leimers, and tell me when the Coast Guard came aboard. A. This is the engineer's book. I am sorry.

Q. All right (handing another logbook to witness). A. (After examining) 4:08 is the time.

Q. And when was the collision? A. (After referring to logbook) At 2:05.

Q. Now, does that, Mr. Leimers, refresh your recollection as to what happened in those two intervening hours? A. Well, not a great deal, no. It just tells me the times the Coast Guard came alongside.

Q. Isn't it true that from the time the Coast Guard was called until they were alongside was less than twenty minutes? A. That I don't know.

Q. Did you finally authorize that message? A. No, the master authorized it.

Q. Now how do you know that, Mr. Leimers? A. That is to the best of my knowledge.

Q. What do you base it on? A. I don't send messages without the master's approval.

Q. Sir? A. We wouldn't send the message without the master's approval.

Q. Well, you don't know of your own knowledge if the radio operator and the purser ever obtained that approval, do you? A. No, I showed the message to the master.

Q. Well now, you remember, of course, that you recently, just testified, that you didn't see the master between half past two and six. I suggest to you that this message was finally sent at 3:44; does that refresh your recollection? A. No, not—I wouldn't know what time it was sent.

Q. Well, I mean, actually, Mr. Leimers, you don't remember getting any approval from the master, do you, you yourself? A. No, I am pretty sure that that was—that that was approved by the master, though.

Q. But you have no recollection of it, have you, Mr. Leimers? A. Well, that is three years ago. I wouldn't know.

Respondent's Exhibit E

Q. You would have remembered a lot better three years ago, wouldn't you? A. Possibly.

The Court: I think we will take our mid-afternoon recess at this point.

(Short recess.)

The Court: All right, Mr. Dow.

By Mr. Dow:

Q. Mr. Leimers, shortly before, or about six o'clock that morning, about four hours after the collision, were you in your room with some of the other officers? A. I could have been.

Q. At that time didn't you receive a call to come to the master's room, all of you? A. I believe so, yes.

Q. What was the purpose of that? A. To write up the log.

Q. The purser was there? A. I think so.

Q. He took the notes down, didn't he? A. I think so, yes.

Q. I mean, you are quite sure, aren't you, Mr. Leimers? A. Yes, I am pretty sure he did, yes, sir.

Q. And while you were all in there, you and third mate and the purser, and I think there was the junior third mate, didn't the second mate, Mr. Cassetti, come in and speak to you for a moment? A. He may have. I don't recall.

Q. Well, would this refresh your recollection: when he came in and the captain was sitting by his desk, didn't he ask Mr. Cassetti if he had been on watch at the time of the collision, and didn't the third mate say, "No, it was me"? A. Not that I recall.

Q. Well— A. No, I don't remember that.

Q. Do you remember very much about the meeting at all? A. Well, I know about the accident, sure, general.

Respondent's Exhibit E

Q. And that is the first time the logbook was written up, isn't it? A. Yes, I think so.

Q. Did the captain ever come down to see Mr. Rivera after the accident? A. I don't believe so.

Q. Did you drink at all on this trip, Mr. Leimers? A. No, sir.

Q. You are sure of that? A. I had—

Q. Sir? A. I think one drink after the accident.

Q. You are sure you didn't have more? A. That's right.

Q. Do you remember your testimony before the Coast Guard, on page 230:

"Q. Didn't have anything to drink on the way from New York until the time of collision? A. I had about two drinks the whole trip.

"Q. With whom? A. I had a drink with a member of the crew after the accident."

Do you remember that? A. That's right, yes.

Mr. Dow: That is all.

The Court: Mr. Estabrook, any redirect?

Mr. DeVarco: No questions.

Redirect examination by Mr. Estabrook:

Q. Mr. Leimers, you testified before the Coast Guard on June 9th, did you not? A. Yes, sir.

Q. And you were recalled again, I believe, on June 11th, were you not? A. I think it was two days, yes.

Q. At that time did you know that the master was suffering from what was diagnosed by the Public Health Service as a concussion of the brain? A. No, sir; I did not know it.

Mr. Estabrook: No questions.

Recross-examination by Mr. Dow:

Q. Did you see any lumps or bumps on the captain's head? A. I didn't examine his head.

Respondent's Exhibit E

Q. Did he complain to you about any lumps or bumps or require any treatment by the purser? A. No, sir.

Mr. Dow: That is all.

The Court: Would you step down to the blackboard, please—the witness.

(Witness leaves stand and goes to blackboard.)

By the Court:

Q. Do you recognize the diagram on the lefthand blackboard, the one in front of which you are now standing, at least recognize the symbols? A. Yes, I think I do.

Q. Now, using a different colored crayon, will you indicate at what point your ship was at when you heaved the anchor? A. When I what?

Q. When you heaved up the anchor. A. You mean at what time we heaved it up prior to the accident?

Q. Well, it had to be prior. A. Yes, that's right.

Q. Now, for your information, in case you are not altogether sure of the symbols there, that "H. B." up in the lefthand corner is the Hellenic Beach. A. This one up here.

Q. The one in the lower corner, without any symbol, is supposed to be the Exmouth, and the one in the middle, a little below the indication of "north" is the lightship. Is that what you call the Overfalls light vessel? A. Overfalls, yes, sir.

Q. All right. You don't have to accept those symbols indicating the different points at which you were during the time, commencing with the heaving up of the anchor until the point of contact with the Hellenic Beach, but at this point indicate where your ship was when the anchor was heaved. A. We were out here some place, Judge, some place right here (indicating).

Respondent's Exhibit E

Q. Well, indicate that. What time do you say that was? A. What time?

Q. Yes. A. That I couldn't tell you. That is in the logbook. I can look it up.

Q. Well, in any event, you are started now; is that right? The fog has lifted and the anchor is up and you are on your way. A. Yes.

Q. Now indicate in what direction you went. A. (After indicating on board) This way.

Q. Now, go ahead; continue as you are indicating with those broken lines, as you started. A. (Witness indicates.)

Q. Now, where is the first point which you observed the Hellenic Beach? A. Well, we passed this light vessel, and I would say it was approximately over here (marking on board).

Q. In other words, at no time, up to the moment you were abeam the lightship, had you observed the Hellenic Beach? A. Not to my knowledge, no, sir.

Q. I am speaking of your own observation? A. No, I hadn't, no.

Q. And where were you from the time you heaved up the anchor? A. I was on the bow of the vessel.

Q. And under ordinary circumstances, if a light were in sight, you were in a position to make an observation; isn't that correct? A. I was—yes, in order to see, but not to establish bearings or anything like that.

Q. Well, in any event, you were going in a westerly direction? A. Yes, sir. We came down from the other lightship and was at anchor some point. I couldn't tell you the exact distances.

Q. Pardon? A. I couldn't tell you the exact distances.

Q. Well, you are past the Overfalls lightship vessel. A. Yes, sir.

Q. Is that right? A. Yes.

Q. Up to the point you came abeam of the Overfalls lightship vessel, did you see the port light of the Hellenic Beach? A. No, sir.

Respondent's Exhibit E

Q. Where is the first point from which you observed the port light of the Hellenic Beach? A. It was some time after passing Overfalls.

Q. Some time? A. It was up in this position here (indicating).

Q. Now, from the position in which the Exmouth was, which was the burdened vessel and which was the privileged vessel? A. In clear weather, it would be the Exmouth would be the burdened vessel, under the rules of the road, in a crossing situation.

Q. Well, is there any doubt that this was a crossing situation? A. Yes—I think the rule is—special rule is—special rule of special circumstances applied, more or less.

Q. Well, absent special circumstances, in clear weather or foggy weather, which was the burdened vessel and which was the privileged vessel? A. In clear weather I would say the Exmouth was the burdened vessel.

Q. And the Hellenic Beach was the privileged vessel? A. Yes, sir.

Q. And wasn't this clear weather? A. Well, visibility wasn't too good.

Q. Now you still haven't answered my question. How far away from the Hellenic Beach were you when you first observed its port light? A. Well, anywhere from one to three miles.

Q. You say at no time did you hear any blast, either on your vessel or on the Hellenic Beach? A. No, sir.

Q. Now, will you indicate on the board the precise point at which you were, which you say is one to three miles from the Hellenic Beach, when you first observed the port light? A. Well, this is about where I think it is (indicating).

Q. And where was the Hellenic Beach? A. Approaching us at an angle, about 45 degrees. At least that is where I saw her, the red light.

Respondent's Exhibit E

Q. That is a crossing situation, is it not? A. Yes, sir.

Q. Now, under ordinary circumstances and barring exceptional circumstances, to which you refer, what would be the course of the Exmouth normally, according to the rules of the road, would be required to pursue? A. Either to pass astern or in case they could, they could pass clear across.

Q. Now, indicate what you mean. Indicate to the members of the jury what you mean by "passing astern"? A. Well, they could have swung this way to pass astern, or it could have swung this way and then passed ahead, in order to have clearance there, unless they were too close.

Q. Well, the burdened vessel, is it permitted to cross in the second direction that you just indicated? A. Well, it could cross her if it had proper clearance, either way.

Q. When you say "it could cross her," you mean continuing in the same direction in which it was going? A. That's right.

Q. Rather than going astern? A. Ordinarily, it passes astern.

Q. Well, don't the rules of the road require that it pass astern in a situation in which you found yourself? A. Just requires that it keeps clear.

Q. Well, either pass astern or keep clear? A. Yes, sir.

Q. And does "keep clear" mean going forward? A. If you have sufficient room, yes, sir.

Q. As a matter of fact, that is what the vessel really did in this situation, went forward, did it not? A. I think so, yes, sir.

Q. It didn't go astern? A. No.

Q. And you are sure you didn't hear any blast from the Hellenic Beach at all? A. Yes, sir: I am positive of that.

Respondent's Exhibit E

Q. And you are also positive you didn't hear any from your own ship? A. Not to my knowledge, no.

The Court: All right.

By Mr. DeVarco:

Q. One question, Mr. Leimers: When your vessel was at this point, east of the Overfalls lightship, what prevented the vessel going up north and then over towards the pilot ship; in other words, staying on the easterly side of the Overfalls lightship? A. Well, I don't know how that water there is. I would have to look at a chart. I don't know whether they can pass on that side.

Q. Let's look at a chart. A. It is customary to round it on the southern side.

The Court: Before we leave that, I would like to ask you a question, before you go back to that.

The Witness: Excuse me.

By the Court:

Q. At the point of contact, were you in inland or were you in international waters, according to your observation? A. We were in, just about in the boundary of inland waters.

Q. Boundary where? A. Boundary between international and inland.

Q. You mean you were in neither then; you were in both? A. Well, just about at the dividing point between the two.

Q. Where was the Hellenic Beach when you first observed the port light? A. Well, I assume she was coming from the pilot station.

Q. I mean, was it in inland waters or in international waters? A. I think she was in inland waters.

Respondent's Exhibit E

The Court: Are counsel by any chance in agreement as to where the point of contact was, whether it was international waters or otherwise? And I want no discussion, only if you are in agreement, that is all I want to know. Now, you can confer privately on that.

(Mr. Dow and Mr. Estabrook confer.)

The Court: I would say, unless I misapprehended some point, the only significance is really with respect to the evidence of the one blast. Otherwise the rules are the same.

Am I wrong about that, counsel?

Mr. Dow: Yes, sir.

The Court: I am wrong about it?

Mr. Dow: No, sir; you are right.

Mr. Estabrook: Mr. Dow and I agree to that.

The Court: Off the record.

(Discussion off the record.)

Mr. Dow: We agree that the collision occurred in international waters, I say about 300 yards, Mr. Estabrook says, no, it is about 500 yards.

The Court: Well, it doesn't make any difference. It occurred in international waters.

Now, I take it there probably is no agreement with respect to the position of the Hellenic Beach at the time claim is made of the giving of the two signal blasts?

Mr. Dow: Say that again, your Honor?

The Court: Is there any agreement as to the position of the Hellenic Beach when it was claimed that the single blasts were given?

Mr. Dow: We say about a quarter of a mile, the two ships were about a quarter of a mile apart.

Respondent's Exhibit E

The Court: No, whether the Hellenic Beach was inland at the time?

Mr. Dow: The first one, there is no question about it, I think you will agree.

Mr. Estabrook: No, I can't agree.

The Court: I said I took it there was no agreement. I think I am right.

All right, at least we are in agreement as to the point of contact.

By Mr. DeVarco:

Q. Will you please, Mr. Witness, answer my question as to, after looking at the chart, if you will, whether there is sufficient deep water? A. There was sufficient water to go close to the light, but it takes you off your normal course and out of the way, out of our way toward the pilot station.

Q. But it can be done? A. It could be done if you swung close, yes.

Mr. DeVarco: All right, no further questions.

Recross-examination by Mr. Dow:

Q. Am I correct, Mr. Leimers, at the time you first saw the Hellenic Beach she was about three miles away? A. Approximately. That is just a guess.

The Court: He said one to three, as I understood him.

Mr. Dow: Sir?

The Court: Did you say three, or one to three?

Mr. Dow: Three.

The Court: When you first saw it?

The Witness: Well, I don't know. It was between one to three miles.

The Court: That is what he said before. I understood him to say that before.

The Witness: That's right.

The Court: All right, you are excused, unless you have other questions, sir?

Mr. Dow: No, I don't.

I would just like to point out to your Honor—

The Court: Well, we will excuse the witness first.

All right, Captain, you are excused.

(Witness excused.)

Respondent's Exhibit F

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NEW YORK

In Admiralty No. 19244

HELLENIC LINES, LIMITED, as owner of the SS HELLENIC BEACH,

Libelant,

vs.

STEAMSHIP EXMOUTH, her engines, boilers, et cetera, and AMERICAN EXPORT LINES, INC.,

Respondents.

Deposition of Bernard E. Giffin, taken before Mary B. Alfriend, a Notary Public for the State of Virginia at Large, pursuant to notice, at the offices of John W. Oast, Jr., Citizens Bank Building, Norfolk, Virginia, April 23, 1952, at 10:00 o'clock A. M., to be read as evidence on behalf of the libelant in the above-entitled cause, pending in the United States District Court for the Eastern District of New York.

Appearances:

MESSRS. DOW & SYMMERS (by MR. DAVID H. BATCHELDER, JR.) and MR. JOHN W. OAST, JR., proctors for the libelant.

MESSRS. HAIGHT, DEMING, GARDNER, POOR & HAVENS (by MR. JAMES M. ESTABROOK) and MESSRS. HUGHES, LITTLE & SEAWELL (by MR. THOMAS M. JOHNSTON), proctors for the respondents.

Respondent's Exhibit F

STIPULATION

It is hereby stipulated and agreed by and between the proctors for the respective parties hereto that filing, sealing and certification of the within deposition be and hereby are waived; that all objections except as to form are reserved to the time of the trial; that the stenographer's fees for the original and two copies are to be taxable, one copy to be supplied to the proctors for the SS Exmouth.

(At this point there was an off-the-record discussion, after which the following occurred):

Mr. Estabrook: On the record, I offer to stipulate that while we cannot waive the signing of the transcript of this deposition, we will stipulate that it may be signed not only before the reporter but before any notary public or other officer authorized to execute oaths.

Mr. Batchelder: I am willing to enter into that stipulation provided that the deposition be signed within a reasonable time after notification to the witness that the deposition is ready for signature.

Mr. Estabrook: That is satisfactory.

Mr. Batchelder: Is that a stipulation that you can enter into?

Mr. Estabrook: Yes.

Mr. Batchelder: When the reporter has prepared the deposition and it is ready for signature, she is to notify Mr. Thomas M. Johnston, of Hughes, Little & Seawell, 936 Wainwright Building, Norfolk, Virginia.

BERNARD E. GIFFIN, called as a witness on behalf of the libelant, and having been first duly sworn, testified as follows:

Examined by Mr. Batchelder:

Q. Your name, please? A. Bernard E. Giffin.

Q. Where do you live? A. Home address, 474—5th Street, San Pedro, California.

Respondent's Exhibit F

Q. By whom are you employed? A. American Export Lines.

Q. In what capacity? A. Third officer.

Q. On what ship? A. Mayfield Victory.

Q. In June of 1949, were you on board the SS Exmouth? A. '49? Yes.

Q. And that vessel is owned by whom, or was owned by whom? A. She is owned by American Export Lines.

Q. And in what capacity were you employed on that vessel? A. Third Officer. Also Junior Third.

Q. You held both? A. Yes, sir.

Q. You have held both ratings on that vessel? A. Yes, sir.

Q. How long had you been aboard the SS Exmouth prior to June 1949? A. I can only estimate the time.

Q. Please. A. Approximately seven months.

Q. How long had you been employed by American Export prior to June of 1949? A. Since June of 1946.

Q. Have you been employed by American Export since June of 1949 up to the present time? A. Yes. I am now.

Q. Continuously? A. Yes.

Q. What license do you hold? A. Second Mate.

Q. Have you been employed by American Export as a Second Mate? A. No.

Q. Have you been employed since June of 1949 by American Export only as a Third Officer? A. No. Since then I have been Junior Third Officer also.

Q. What vessels have you been employed on since June of 1949? A. The Express, as Junior Third; the Explorer as Junior Third; and the Mayfield Victory, as Third Mate.

Q. And that has been pretty constant employment? A. Oh, yes.

Q. You have taken leaves at various times, but other than that you have not been on the beach? A. That is right.

Respondent's Exhibit F

Q. Were you on board the SS. Exmouth at the time she was in collision with the SS. Hellenic Beach near Overfalls Light June 5, 1949? A. I was.

Q. And where were you aboard the vessel at the time of the collision? A. I was on the bridge.

Q. Were you on watch? A. On watch.

Q. When had you gone on watch? A. At midnight, twelve midnight.

Q. And what was the vessel doing at the time you went on watch? A. At that time, the vessel was at anchor.

Q. And what were your duties when the vessel was at anchor, or what duties did you perform when you went on watch? A. Well, I would say routine anchor watch.

Q. Where did you station yourself when you went on watch? A. On the bridge.

Q. Could you describe your routine anchor watch just briefly? A. Well, whenever possible, we should check our anchor bearings, see that the vessel is secure.

Q. You checked the lights, anchor lights? A. Well, of course.

Q. And did this collision occur when you were under way? A. Yes. We were under way.

Q. And when did you get under way? A. Well, I cannot recall the exact time. I would say about half-past one.

Mr. Estabrook: Mr. Batchelder, I have, if you care to use them, the logbook and the bellbook of the Exmouth.

Mr. Batchelder: I was just about to suggest that I have a photostat which you furnished me of both the bellbook and the deck log, which I will offer for identification.

(The photostat referred to of the rough deck log was marked Libelant's Exhibit 1 and the photostat referred to of the deck bellbook was marked Libelant's Exhibit 2.)

Respondent's Exhibit F

By Mr. Batchelder:

Q. I believe you testified that you got under way at 1:30. Was that correct, after you have reviewed the log? A. After seeing the log, no. It is not correct. We commenced heaving the anchor at 1:42 A. M.

Q. And when was the anchor two-blocked? A. The anchor was away at 1:51.

Q. Would you look at the deck bellbook and tell me what time the first order was given to the engine room after the anchor was away. A. The first order to the engine room after the anchor was away was 2:05. That was "Stop."

Q. Then, when was the next preceding order given to the engine room? A. At 1:51.

Q. What was that order? A. "Full speed ahead."

Q. And you believe that was given before the anchor was away? A. That was given at the same time the anchor was away.

Q. Did you give that order on the telegraph? Did you operate the telegraph? A. I operated the telegraph, yes. I did not give the order.

Q. No, but you operated the telegraph manually to give that order to the engine room? A. Acting upon orders, I did.

Q. And did you get a response from the engine room? A. Yes.

Q. Did you have reason to believe that the engine room had been notified that the order was to proceed full speed?

Mr. Estabrook: I object to the form of that question.

Mr. Batchelder: I will withdraw the question.

Respondent's Exhibit F

By Mr. Batchelder:

Q. Did the vessel get under way at that time? A. The vessel was under way at that time—got under way.

Q. Do you recall the heading of your vessel when the anchor was away, approximately? A. (The witness paused.)

Q. Well, was it north, south, east or west? A. Well, I could figure that out if I had just a little more time.

Q. Take all the time you want. Perhaps a photostat of the chart of the area, would that help? A. No.

Q. To give you an idea of how you were lying at the time? A. I do remember the bearing of the light vessel from our anchorage position.

Mr. Batchelder: I now offer witness Hellenic Beach Exhibit 2 for identification, offered in evidence June 14, 1949. (Handing to witness.)

By Mr. Batchelder:

Q. Does a review of that chart help to refresh your memory as to what your heading was at the time? A. Yes, it does.

Q. And what do you believe that heading was? A. You speak of the time?

Q. When the anchor was away and the order "Full speed ahead" was given. A. At the time we were heading approximately southeast.

Q. Approximately 120, you believe? A. Approxiately, yes.

Q. Who was on the bridge with you at the time that the order was given "Full speed ahead"? A The Master; the helmsman.

Q. Is that all? A. That is all.

Q. Who gave the order "Full speed ahead"? A. You mean the order for execution?

Respondent's Exhibit F

Q. Well, who first mentioned "Full speed ahead"? A. The Master.

Q. Which was carried out as an order. A. The Master.

Q. Had you suggested that full speed ahead was the proper order? Had you mentioned full speed ahead? A. No.

Q. You said nothing about what speed to take? A. I said nothing. That is not my job.

Q. How long had the Master been on the bridge prior to getting under way? A. That is prior to the time the anchor was away?

Q. Yes. A. Oh, I would say a half an hour.

Q. In other words, he came up on the bridge about 20 minutes after one? A. Something like that, yes.

Q. And he was up there from 20 minutes after one until the anchor was away? A. Yes.

Q. And what had he been doing during that period? A. Well, I would answer that by saying nothing more than his routine duties, in any such situation of heaving the anchor.

Q. When did he give the order to commence heaving the anchor? A. Oh, about the time he came on the bridge.

Q. He took half an hour to bring up the anchor? A. You must realize it takes time to call the mates, the boatswain, get the men ready, get the operation into effect.

Q. Do you recall seeing him plot a course on the chart for your further trip? I understand you were proceeding to Philadelphia.

Mr. Estabrook: I object to the form of the question.

Mr. Batchelder: I will withdraw the question.

By Mr. Batchelder:

Q. Had you called the Master to come up on the bridge? A. Acting on his orders, yes.

Respondent's Exhibit F

Q. What were his orders that compelled you to call him up on the bridge? A. To call him if the fog lifted.

Q. When did the fog lift? A. I think about the same time I called him.

Q. In other words, about 20 past 1:00? A. Approximately.

Q. What was the visibility at that time? A. Well, I believe, before, I stated I estimated it to be three or four miles.

Q. When you say "before." you are referring to the Coast Guard hearing? A. To the hearing.

Q. In connection with the collision. Is it your present recollection that the visibility was about three or four miles? A. It is.

Q. The ship was due to sail to Philadelphia, was it not, after you had weighed anchor? A. In other words, you mean our destination?

Q. Your destination, yes. A. Yes.

Q. And you had anchored off Overfalls simply because of the fog of the preceding evening? A. I was given to understand that, yes.

Q. Did you have any reason to think it was any other reason? A. No.

Q. Was it foggy the preceding evening? A. It was.

Q. Do you know whether any other vessels went up the river during the time you were anchored? A. I do not.

Q. You don't know? A. I do not know.

Q. But you believe that you anchored because of the fog?

Mr. Estabrook: I object to the form of that question.

Mr. Batchelder: By implication he says there might be some reason.

The Witness: That was not my reason for making that statement. I did not wish to imply that.

Respondent's Exhibit F

Mr. Estabrook: I believe that you can develop that the man was asleep at the time the Exmouth anchored.

The Witness: The way you worded the question caused me to answer with a little caution.

By Mr. Batchelder:

Q. I simply want to find out whether there was any other reason for anchoring the preceding evening than the fact of the fog. A. Then, if that is your reason, there was no other.

Q. When the Master came up to the bridge, at approximately 1:20, what did you say to him concerning the weather? A. Naturally, I can only give you approximate statements. I called him on the telephone and I told him that the fog had lifted, which I had been instructed to do.

Q. Do you have a night order book on your vessel? Did you have a night order book on the Exmouth? A. I believe so.

Q. Had you read the night order book? A. You were asking me if we had a night order book?

Q. On the Exmouth. A. Yes.

Q. Your answer was yes? A. No. The answer is not yes to the question. There are occasions that night orders are not written out. Sometimes the order is verbal. This was one of those occasions.

Q. It was not a practice on the SS. Exmouth to have, as a routine thing, a night order book? A. Usually, when the vessel was at sea, in other words, crossing the Atlantic, not sailing coastwise. In other words, if the Master had no reason to come to the bridge for anything at all, he would write up the night orders. If he thought that he would be up there such as he would be sailing up and down the coast, he would usually pass verbal orders to the mate on watch.

Respondent's Exhibit F

Q. And what were your orders when you relieved at twelve o'clock? A. To call the Master if the fog lifted.

Q. When you telephoned the Captain, he was in his cabin? A. I assume that.

Q. Is that where you reached him? A. By telephone.

Q. Well, the telephone you called him on, could it be answered anywhere else than in his cabin? A. Under circumstances, yes, it could be.

Q. Under what circumstances could it be answered anywhere else? A. If the phone was not functioning properly, which has happened.

Q. Where could it be answered in that event? A. Almost any other telephone station on the ship.

Q. What kind of a system do you have? Do you have a telephone with a button for the Captain's cabin and a button, say, for the Chief Engineer's cabin, or— A. Well, they are not buttons, they are pointers, more or less.

Q. On a dial? A. A dial.

Q. And you turned the dial to a point marked for the Captain's cabin? A. Yes.

Q. And does that ring a bell in the Captain's cabin? A. If it is functioning properly, yes.

Q. And you made this call yourself? A. I did.

Q. And you placed the pointer on the mark for the Captain's cabin? A. I did.

Q. And you know the Captain's voice? A. Yes.

Q. And you are reasonably sure that the person who answered was the Captain? A. I am.

Q. And he answered immediately? A. Yes. It took no more time than usual.

Q. What is his usual time for answering the telephone? A. I can't—I can't say that.

Q. And how long after you called him did he appear on the bridge? A. Do you want minutes or almost immediately? Is that satisfactory?

Respondent's Exhibit F

Q. Well, approximately, yes? Do you mean by "almost immediately" five or ten minutes? A. Oh, less than five minutes.

Q. Where is the Captain's cabin located in relation to the wheelhouse? A. Directly below. His office—they are interconnected—his office and his cabin.

Q. And you were under the impression at the time you called him that he was in his cabin, since you called his cabin; you presumed he was there? A. Yes.

Q. And you got him there? A. Yes.

Q. You have no reason to think he was anywhere else? A. No.

Q. When you called the Captain on the phone, did you tell him the visibility, the approximate visibility? A. No. I said the fog was lifting, which I considered sufficient.

Q. What did he say to you? A. Something to the effect that "I will be right up."

Q. Do you remember his exact words? A. No.

Q. But at the time you were satisfied that he would be up directly? A. Yes.

Q. And when he reached the wheelhouse, did he check any of the anchor bearings? A. No. That is usually my job. That was my reason for being on the bridge.

Q. Did he ask you whether you had? A. I may have told him myself. I usually do.

Q. There was no indication that you had shifted your berth? A. No.

Q. Do you know of your own knowledge whether he was on the bridge when the ship was anchored? When the ship anchored? Do you know? If you don't know, just say so. A. When the ship first anchored?

Q. Yes. A. I don't see how I can answer that, because I was not there.

Q. That is all I wanted to know. I just wondered if you knew. You don't have any duties at the time of anchoring? A. No.

Respondent's Exhibit F

Q. What was the first order the Master then gave after he had reached the wheelhouse, as far as the navigation of the vessel was concerned or the preparation for getting under way? A. In other words, you speak of general preparations for getting under way?

Q. That is right. A. His orders were nothing more than routine: "Call the mates. Get the boatswain. Start heaving. Put the engines on standby."

Q. And did you carry out all those orders? At least, did you notify the various people, or did you ask somebody else to do it? A. I don't remember that. I can't remember that.

Q. Do you recall whether you used the telephone to call any of the mates? A. That is not usually the practice. I don't remember for sure.

Q. What is the practice? A. I go down or perhaps send a man down to call the mate and boatswain.

Q. Did you call the engine room or is that done by the telegraph? A. No. That is usually a practice to notify them that we will be heaving the anchor soon.

Q. How do you do that? A. By telephone.

Q. The telephone operated properly on that occasion? A. Well, I did not say we did. I don't remember. But I say that is usually the case.

Q. Oh, I am sorry. Do you recall about how long it took for the boatswain and the Chief Officer to come up on the bow, begin heaving in the anchor? A. No, I don't remember.

Q. Does your log reflect when you began to heave in the anchor? A. I believe it is here. (Indicating.) We commenced heaving the anchor at the same time we had standby.

Q. And what time was that? A. Which was 1:42.

Q. And the order for full speed ahead was given at what time? A. At 1:51.

Respondent's Exhibit F

Q. In other words, the Captain was on the bridge from about 20 minutes past 1:00 to 1:51 before you began heaving the anchor? A. Will you say that again?

Mr. Batchelder: Would you read it?
(The last question was read by the reporter.)

A. No. That is not right.

By Mr. Batchelder:

Q. I believe you testified that the Master came up on the bridge approximately 20 past 1:00? A. That is right.

Q. And— A. The anchor—

Q. The log reflects that you began heaving the anchor at 1:51. Was he on the bridge during that entire period? A. I believe I said the anchor was away at 1:51.

Q. I am sorry. Then it was 1:42 that you began heaving the anchor. I am sorry. A. That is right.

Q. That was my error. Do you recall what the Master was doing during that period of approximately 20 minutes? A. If you speak of his exact actions, I cannot tell you.

Q. Did he plot a course to take you to, say, the pilot station? A. In other words, did he go into the chart room at that time and plot a course? I cannot answer that with certainty.

Q. Do you recall— A. It is my—

Q. —whether a course— A. It is my understanding that the course had been laid out previously but I am not sure.

Q. Well, as a deck officer, had you checked the chart with the thought in mind that you were going to get under way and proceed to the pilot station, just to have in your own mind what the course would be? A. Yes. I recall I checked my bearing of the lighthouse and so forth.

Respondent's Exhibit F

Q. Do you recall what that proposed course was to be? A. You are speaking of the course to the light vessel from our anchorage? Is that it?

Q. Well, perhaps I have gotten ahead of myself. Did you plan to lay a course from your anchorage directly to the pilot vessel? A. No. That can be done visually in most cases.

Q. Could you see the pilot vessel at that time? A. Yes.

Q. There had been fog? A. There had been fog.

Q. Had you been able to see the pilot vessel when you came on watch, for instance? A. No.

Q. So, of course, there was always the possibility that the fog would come back? A. The possibility was there, I suppose.

Q. In other words, it might have been prudent to have known your course, in case the fog came in, so that you wouldn't lose the pilot vessel?

Mr. Estabrook: I object to the form of the question.

By Mr. Batchelder:

Q. In other words, it appears that you were proposing to lay a course to the light vessel or to clear the light vessel, instead of a course to the pilot ship?

Mr. Estabrook: I object to the form of that question.

By Mr. Batchelder:

Q. Were you planning to lay a course from your anchorage, to clear the light vessel? A. You speak of me personally?

Q. All right. You, personally. A. I was not planning to.

Respondent's Exhibit F

Q. As a watch officer, that part hadn't entered your head as to what you were going to do? A. No.

Mr. Estabrook: I object to the form of the question.

By Mr. Batchelder:

Q. Had a course been laid on the chart to clear the light vessel? A. If it is not here (indicating) I can't remember now.

Q. You don't recall the Master laying out a course to clear the light vessel? A. I do not remember that.

Q. Did the Master go near the chart? A. I believe you stated yourself that this happened three years ago, and I can't remember his actions at that time.

Q. After the anchor was away and the order for full speed ahead was given, what course was given to the helmsman to steer? A. As I recall it, we swung around—

Q. What was the first order to the helmsman? A. Well, it would be hard left.

Mr. Estabrook: Speak up so we can all hear you, Mr. Giffin.

By Mr. Batchelder:

Q. Hard left? A. That is right.

Q. How far away from Overfalls were you at that point? A. I can't even remember that unless it is on here. (Witness perusing exhibit.) No, it is not here.

Mr. Estabrook: He is referring to Hellenic Beach Exhibit 2 for identification.

Respondent's Exhibit F

By Mr. Batchelder:

Q. Do you recall testifying before the United States Coast Guard hearing in New York in connection with the investigation of the collision, June 9, 1949? A. I do.

(At this point there was an off-the-record discussion, after which the following occurred:)

By Mr. Batchelder:

Q. Would it refresh your recollection if I advised you that you testified that the vessel was at anchor approximately one mile, bearing 291 degrees from Overfalls Light vessel? Does that sound approximately correct? A. Yes. If that was my testimony, that—

Q. You believe that was? A. I believe that.

Mr. Estabrook: I suggest that the record should be that the light ship bore 291 degrees from the Exmouth.

Mr. Batchelder: That is correct.

By Mr. Batchelder:

Q. After the Master had given the order "Hard left," which I believe you said he had—is that correct? A. I don't believe I said he had given it. I said the order had been given.

Q. Do you recall who gave it? A. At the moment, no, I don't.

Q. It was either you or the Master, wasn't it? A. It must have been one of the two of us.

Q. But you don't recall which? A. I do not remember which, no.

Q. And that order was carried out? A. I assume it was.

Q. The vessel turned? A. The vessel turned.

Respondent's Exhibit F

Q. And subsequently, was an order given to steady on a particular course? A. I think perhaps I should clarify that. This I do recall. I was told to put the ship on the course.

Q. On course? A. On the course.

Q. By whom? A. By the Master.

Q. And what course did he give you? A. I was told to put the ship on the course. I gave the order to the helmsman as she was swinging. I do not know whether I gave the original order or not. As I saw the light ship, the light vessel, on the starboard bow, which is where the Master wanted it, I told the helmsman to steady. I may have asked him then "What course are you heading?" or "What are you heading?" I also remember watching the light vessel and I thought we might be a little too close, so I told him to come five more degrees to the left. Now, that is the way the course was set.

Q. It was not plotted on the chart, or at least if it was plotted on the chart, you did not take your course from the chart but took it visually from an observation of Overfalls Light? A. I took it visually, yes.

Q. Where were you standing, do you recall, when you gave those orders to the helmsman? A. Probably in the wheelhouse.

Q. Were you observing a repeater at the time? A. I was not. That was visual again.

Q. There is one repeater in front of the helmsman? A. There is a steering repeater off to one side of him. In other words, it is for his use.

Q. Is that to the left of him? A. A little to the left.

Q. Is there a repeater on the wings of the bridge? A. There are two, one on each wing.

Q. Do you recall where the Captain was at the time you were swinging left? A. Not exactly. I know he was on the bridge.

Respondent's Exhibit F

Q. Did you see any other vessels at the time you were swinging? A. This was after we were under way and we were swinging? Yes, I did.

Q. And what did you see? A. I saw the pilot vessel, the light vessel, one other ship that had been anchored, and one more ship coming down the—from the pilot station.

Q. Where was the vessel that had been anchored, in relation to your vessel? A. All I can say, she was close to us.

Q. On which side? A. Well, it would be on our starboard side. This is while we're still at anchor.

Q. Did she get under way about the same time you did, within five or ten minutes? A. I do not recall that.

Q. Was she under way while you were swinging? A. I don't think so.

Q. When did she get under way in relation to the time you got under way? A. I have no idea.

Q. Was she under way during the time you were approaching the light vessel? A. Might I say that after we got under way I did not notice the other vessel at all. I don't recall any of her movements.

Q. How close was she when you were anchored? A. Well, it is difficult to estimate. I would say two or three hundred yards, roughly.

Q. Off your starboard side? A. We were lying parallel to her. She was on our starboard side.

Q. When you were at anchor? A. When we were at anchor.

Q. And then you swung around to the left? A. That's right.

Q. In other words, you swung away from her? A. Yes.

Q. Did you bring to the Captain's attention the position of any of the lights which you have just mentioned, the light vessel, the pilot vessel or the vessel coming down, or the anchored vessel? A. What do you mean by positions?

Respondent's Exhibit F

Q. Did you point them out to the Captain? A. Yes.

Q. All of them? A. I believe I did, all of them.

Q. You think he was aware of the position of each of them as you pointed them out?

Mr. Estabrook: I object to the form of the question.

Mr. Batchelder: There appears to be a great delay in the objections to the form of the questions, being made after the witness appears to have difficulty in answering the question.

By Mr. Batchelder:

Q. What lookouts were posted on the Exmouth at the time you got under way? A. Well, as is ordinarily the case, there is one man on the bow.

Q. He was the only lookout? A. Naturally, I acted as lookout; the Master as lookout.

Q. All competent lookouts? A. Well, after having done it for a number of years, I think that the man would be qualified.

Q. From your recollection after you had steadied on the course which was laid out to clear the light vessel, do you recall whether the ship had reached its full speed? A. Now, you said the course that was laid out?

Q. I mean your visually observed course. A. I would have no way of knowing whether she had reached full speed or not.

Q. Any way of knowing how fast she was going? A. Not with certainty, no.

Q. How fast do you think she was going? A. You were assuming that the vessel reached full speed, I suppose?

Q. No. I am not assuming anything. I am just trying to find out, well, really, how long it takes your vessel to reach full speed; and I presume this was a rather short

interval, that she had not reached full speed when you steadied on your course. A. Of course, you would agree that the engineers might be a little slow upon occasions or something that I know nothing about might have happened.

Q. I don't want a technical answer. I just want your opinion as a watch officer, as to whether you felt that your vessel had reached full speed by the time you had steadied on your course. You have observed her characteristics and I have not. A. In other words, you ask me if I think we reached full speed?

Q. That is correct—as a watch officer observing the vessel's motion through the water as well as the objects in sight. A. Once more, you refer to full maneuvering speed, or the same speed, or—

Q. I presume when you gave the order for full speed ahead, under those circumstances the engineers would give you maneuvering speed? A. Maneuvering speed? I don't think I can truthfully say. I don't know whether she reached full speed or not.

Q. Now, you mentioned that you sighted a vessel coming down, I believe you said from the pilot station? A. I take it for granted that she came from the pilot station.

Q. What lights did you see on that vessel? A. The white mast head and range lights and the port's red running light.

Q. Did you call the Captain's attention to the fact that you had seen those lights? A Yes.

Q. And you mentioned specifically any of those lights? A. I usually do. If it is showing red, I say "She is showing red."

Q. Do you have any reason to think that the Master did not hear you when you told him that? A. No, I have no reason to think that.

Q. Did any of the subsequent events make you think that maybe he had not heard it?

Respondent's Exhibit F

Mr. Estabrook: I object to the form of the question.

By Mr. Batchelder:

Q. Do you recall what the course was—

Mr. Oast: Do you want an answer to that last question?

Mr. Batchelder: I am not demanding an answer.

By Mr. Batchelder:

Q. Do you recall what the course was that the helmsman finally steadied the ship down on, after your swing to the left? If you don't recall the course, perhaps I can refresh your recollection from the hearings before the Coast Guard. A. Well, as—you say as we were—

Q. After you had completed your swing. A. Completed the turning and were heading past the light vessel, to the light vessel?

Q. Yes. Page 83. (Reading)

"Question: The first course after you got the anchor up? Answer: The first course would be 275 after swinging."

A. That would be approximate.

Q. And, in order to save time, I believe that you had earlier testified that the course was 280 and you corrected it five degrees, as you said today? A. That is correct.

Q. Making it 275. After you had steadied on course 275, did you again observe the lights of the vessel approaching, presumably from the pilot vessel? A. Yes.

Q. And what lights did you see then? A. The same lights.

Respondent's Exhibit F

Q. And approximately how far away was that vessel, would you say, after you had completed your swing? A. May I refer to the chart?

Mr. Johnston: Again referring to—

Mr. Batchelder: Hellenic Beach Exhibit 2 for identification.

A. (Continuing) After looking at this chart, I would say she was about five miles away, after completing the swing.

By Mr. Batchelder:

Q. After you had completed your swing? A. After we had completed our swing; this, once more, is an approximation.

Q. When you laid out your course of 275 by visually observing the light vessel, how close aboard did you plan to pass her? A. You always use the words "laid out the course."

Q. Well, I tried to qualify it by saying by visual observation of the light vessel. A. In other words, you want to know just how far I intended to pass off the light vessel? I had not a set distance in mind. I intended to clear the vessel with enough room and still have her close by as I passed.

Q. Had the Master given any specific instructions as to how close to pass her? A. Specifically, no.

Q. What had his instructions been, if you recall them accurately?

Mr. Estabrook: I object to the form of the question.

By Mr. Batchelder:

Q. What were the instructions that the Master gave?

Respondent's Exhibit F

Mr. Estabrook: He didn't give any instructions.

Mr. Batchelder: He said that he gave instructions to clear the light vessel, or approach the light vessel.

Mr. Estabrook: That is what I understood. That has been covered already. You are asking about something else.

Mr. Batchelder: I am asking him what were the specific words of that order.

Mr. Estabrook: No objection to that question.

. As far as recalling specific words, I cannot give you
em. I can give you—

u Mr. Batchelder:

Q. What did he say? "Head out toward the light essel"? A. Something to the effect of "Put the light essel on the starboard hand. Pass her close to."

Q. Pass her what? A. Close to. In other words, close n the starboard hand.

Q. Did he make any mention of avoiding the vessel hich was approaching you from the pilot vessel? A. I o not recall such an order.

Q. Did he make any mention of the vessel approaching? A. I cannot recall anything there.

Q. After you had set this course of 275, what was the earing of the vessel approaching which later turned out o be the Hellenic Beach, relative bearing from you? A. I can only answer that by referring to my testimony at he Coast Guard hearing, which states she was approxinately three points on the starboard bow.

Q. Did you continue to observe the vessel that turned ut to be the Hellenic Beach? A. I did.

Q. Did that bearing of three points off the starboard ow change in the next five minutes? A. I will have to nswer that by saying, not noticeably.

Respondent's Exhibit F

Q. In other words, it stayed pretty much steady? A. Quite constant, yes.

Q. And as a watch officer, did that give you any cause for alarm? A. I shall have to say yes to that.

Q. It caused you alarm because if the bearings remain constant it indicates that you are on a collision course, is that correct? A. Yes. The rules of the road state so.

Q. And when you are in that situation, you knew from the rules of the road that you were the burden vessel?

Mr. Estabrook: I object to the form of that question.

By Mr. Batchelder:

Q. Were you the burden vessel in that situation?

Mr. Estabrook: I object to the form of that question. You are asking this witness a question of law.

Mr. Batchelder: He is testifying as to his knowledge of the rules of the road as a watch officer. I will rephrase the question.

By Mr. Batchelder:

Q. As an officer of the deck at the time, did you believe that your vessel was the burden vessel in a crossing situation, under the rules of the road? A. I take it for granted I am not on trial myself.

Q. Certainly not. A. In that case, as you put it, a crossing situation, we would be termed the burden vessel.

Q. And your vessel was in a crossing situation? A. Well, once more—

Q. At the time you completed your swing.

Respondent's Exhibit F

Mr. Estabrook: At this time I would like to enter on the record my objection to this line of testimony on the ground that the determination of whether there was a crossing situation or special circumstances is one of the issues to be decided in the ultimate determination of the case, and the witness should not be in a civil litigation required to testify to what must ultimately be decided by the judge in admiralty.

Mr. Batchelder: I want his opinion as a watch officer.

Mr. Estabrook: I am putting it on the record. Now go ahead.

Mr. Batchelder: I am asking him this question as a watch officer to determine his opinion as to whether his vessel was in a crossing situation at the time he steadied on a course of 275 and saw the vessel approaching which later proved to be the Hellenic Beach.

A. You say at the time I steadied on the course of 275? In that case, I would consider it a crossing situation.

By Mr. Batchelder:

Q. Did you point that fact out to the Captain? A. You are asking me if I pointed the fact out that we were in a crossing situation to the Captain? That is not usually done.

Q. Perhaps you didn't do it in words exactly like that, but possibly you pointed out to him that you saw a vessel showing a red light, indicating that they were approaching on a course across yours and that you were on that vessel's port hand?

Mr. Estabrook: I object to the form of that question.

Respondent's Exhibit F

By Mr. Batchelder:

Q. I believe you have testified that you notified the Captain that there was a vessel approaching with a red light showing?

Mr. Estabrook: I object to the form of that question.

Mr. Batchelder: I believe he so testified. I will strike the question.

By Mr. Batchelder:

Q. Did you notify the Captain that there was a vessel approaching showing a red light? A. I stated that previously, yes.

Q. And did you tell him again, after you had steadied on a course of 275? A. I might have. I don't know for sure.

Q. After steadying on a course of 275, what was the next order given to the helmsman by either you or the Master? A. Once more I must ask—you say after we had steadied on the course of 275? That, of course, means a 5-degree change to the left. The order would be "Steady as she goes", actually.

Q. That is true. What would be the next order after that? What was the next order after that? A. After settling on the course, "Steady as she goes."

Q. No. I mean after "Steady as she goes." A. Well I would like to clear that. I take it for granted that you are speaking of the time we had the lightship abeam?

Q. I believe so, yes. Well, will you give in your own words what occurred as far as orders to the helmsman are concerned, after the order "Steady as you go," and as you were coming abeam of the light vessel? A. One

more, I can say that I cannot recall specific words. I know that the order to come left was given when the lightship was abeam.

Q. And it was given to some specific course. Do you recall approximately what that course was? A. I believe the testimony states somewhere around 310 or 317.

Q. In other words, this order contemplated a course change completely around the compass to reach the course of 310 or 317 from your heading at that time? A. Are you asking if I—

Q. That would have been the result of this order of "Come left to 310" or "317"? A. In other words, if we had come left and come to 317, we would have to go, come almost completely around a circle. Yes, that would be the case.

Q. And who gave that order to come left? A. The Master.

Q. And what did you say? A. Something to the effect that "You mean right, Captain?" or something to that order.

Q. Do you recall what the helmsman said? A. He may have said something to that effect.

Q. What did the Captain then say? A. Once more, something to the effect that "No, I mean left there."

Q. And then what did you say? A. Again, something to the effect that we should come to the right.

Q. Was this conversation in that quiet tone? A. Well, I can't remember that.

Q. Well, was it vehement? A. I might say it was emphatic.

Q. Was it accompanied by any profanity? A. I can't recall that.

Q. But it was emphatic? A. Yes.

Q. On your part and on the Captain's, too? A. I don't —I can't speak for the Captain. I speak for myself.

Respondent's Exhibit F

Q. Well, was his tone of voice emphatic? A. Well, it must have been. Yes, I would say it was.

Q. It was fairly loud and definite? A. I will say that I could hear him.

Q. How far away were you? A. Quite close.

Q. And how long did this exchange continue? A. Oh, I can't tell you that. It might have been a few seconds, it might have been a couple of minutes. I don't know for sure.

Q. What was the result of it? What did you do? A. As I recall it. I was told to go into the chart room and check the course and make sure.

Q. Check what course? A. The course, that would be, if it was laid down from the light vessel to the pilot vessel.

Q. In other words, the Captain was contemplating that 310 or 317 was a course from the light vessel to the pilot vessel?

Mr. Estabrook: I object to the form of that question.

By Mr. Batchelder:

Q. Do you know what the course from the light vessel to the pilot vessel was? A. Well, it would vary or it might vary by one or two degrees.

Q. What course did you plan to set? A. If I recall, I think I testified that it was around 317, something like that.

Q. When you went into the chart room, it wasn't determined whether you were going to come left to that course or come right to that course? A. It was not determined, no.

Q. And you were going into the chart house to determine what the proper course between the light vessel and the pilot vessel would be? A. Yes. I would say that.

Respondent's Exhibit F

Q. Did you have any other object in going in the chart house? A. No.

Q. Did you actually lay out a course on the chart between the light vessel and the pilot vessel? A. I did not.

Q. What did you do in the chart room? A. As I recall it, I laid the parallel rulers on the approximate course and read it off the compass rules. I did not lay any course out.

Q. But you did find out what the proper course would be? A. Yes.

Q. The Captain had asked you to go in the chart room to determine for him the proper course between the lightship and the pilot vessel, is that correct? A. I think this testimony will say that I think the reason for my going into the chart room was to find out whether we should go right or left to that course. I think the course had been predetermined, according to this testimony.

Q. Which testimony are you referring to? A. At the moment.

Q. In other words, your testimony now is to the effect that you went into the chart room to determine whether you should go right or left? A. That is what we were getting at here, was it not?

Q. Then I misunderstood you. I thought you said that you went into the chart house to determine whether the course from Overfalls to the light vessel was 310 or 317 or what the course should be. A. I may have said that. I don't recall it now.

Q. Well— A. I think—

Q. Then, what did you go into the chart house for? A. To get back to our words of a few moments ago, we were saying we should come right or we should come left, and I think my orders were to this is to the best of my recollection— to go into the chart room and find out whether or not we should be to the right or to the left.

Respondent's Exhibit F

Q. How were you going to determine that in the chart room? A. I think I should say I was obeying orders.

Q. And when you went into the chart room, you actually didn't do anything but think that was a silly order?

Mr. Estabrook: I object to the form of the question.

By Mr. Batchelder:

Q. Go ahead and answer that one. Go ahead and answer it. A. I thought it was pointless.

Q. When you came out of the chart room, what did you say to the Captain? A. Something to the effect that we had to go right.

Q. What did the Captain say? A. I believe he told the helmsman then to come right.

Q. By the time you came out of the chart room, how far away was the Hellenic Beach? A. Once again, I can only estimate. I would say a mile or a mile and a half. It has been a long time ago.

Q. But you have read the testimony before the Coast Guard more recently than three years ago, haven't you? A. I did not have the opportunity to read it all. I could not finish it.

Q. You have not read the Coast Guard testimony at all? A. Entire. Part of it, yes.

Q. Have you read your testimony? A. Yes.

Q. Recently? A. Sunday.

Q. Sunday? Four days ago—three days? A. (No answer.)

(Thereupon, at 12:30 o'clock P. M., a recess was taken until 1:30 P. M.)

Respondent's Exhibit F

AFTERNOON SESSION.

(Met pursuant to adjournment, with Messrs. Batchelder, Oast and Estabrook present.)

(On request of Mr. Batchelder, the record was read by the reporter as follows:)

"Q. By the time you came out of the chart room, how far away was the Hellenic Beach? A. Once again, I can only estimate. I would say a mile or a mile and a half. It has been a long time ago."

By Mr. Batchelder:

Q. You came out of the chart room then and said to the Captain, "We should come right," is that correct? A. Yes.

Q. Did the Captain agree? A. About that time I would say yes, he agreed.

Q. Well, did he say "Yes, come right"? A. Something to that effect.

Q. Did he give any order to the helmsman? A. Well, I say something to that effect. I don't know. In all probability he gave an order to the helmsman. I can't tell you what it was: something to the effect of "Come right."

Q. Was a course given— A. I don't—

Q. —by you or the Captain? A. I don't think so.

Q. Did you have a course in mind?

Mr. Estabrook: I object to that question.

By Mr. Batchelder:

Q. Am I correct in saying that you had previously considered that the course of 311 or 317, you are not exactly sure which, was the proper course between the light vessel and the pilot vessel? A. Yes.

Respondent's Exhibit F

Q. Where was the light vessel in relation to your vessel, both in distance and in bearing, when you came out of the chart house? A. Well, I cannot give you the distance, but I can say she—by that time we were swinging left and she must have been somewhere astern of us.

Q. You were swinging left, your vessel? A. You remember the order had been given to come left.

Q. And the helmsman had obeyed that order? A. To my knowledge.

Q. Had you seen the vessel swing? A. Well, can't we say that I took it for granted that the vessel was swinging? At that time I could not take bearings, or see anything ashore—or notice anything at that time ashore.

Q. Was the vessel swinging, to your knowledge, prior to your going into the chart room? A. Well, I can't answer that.

Q. Did your vessel ever reach a course of 311 at that point? A. May I say I doubt it.

Q. Did she swing to the right? A. Once more, I cannot say. I don't know.

Q. I read you a series of questions and answers. See whether these refresh your recollection. (Reading:)

> "Question: What did he eventually do, the helmsman? Answer: After I went in to make sure that the course should be gone to the right, I hollered from the chart room that she should go right, to the Captain.
>
> "Question: What did he say? Answer: Then he says to the helmsman, 'Bring her right, then.'
>
> "Question: Did the helmsman do that? Answer: The ship was swinging.
>
> "Mr. Dow: The what?
>
> "Question: Did the helmsman do that? Did he bring her right? Answer: I didn't see him, but the vessel was swinging to the right.

Respondent's Exhibit F

"Question: Did you see the ship swing? Answer: Yes."

Do those questions and answers refresh your recollection as to what happened at the time? A. Once more, I cannot honestly say that I saw him coming to the right now.

Q. But you did so testify at the Coast Guard hearing? A. If it is there, I suppose I did.

Q. Did you observe the bow of your vessel in relation to the lights of the Hellenic Beach when you came out of the chart room? A. I can't—

Q. Either the bow or your mast or any object on your vessel? A. I understand what you want. I understand what you are asking. In other words, you want me to notice something ahead so that I would know whether she was swinging or not, but I can't say that I can recall that.

Q. When you came out of the chart room, where did you go? In the wheelhouse or the bridge, immediately? A. I went back to the wheelhouse.

Q. Did you take a position to the right of the helmsman? In other words, were you on the right-hand side, starboard side, of the wheelhouse? A. I believe I was, yes.

Q. Were you watching for the Hellenic Beach? A. Yes.

Q. Did you notice whether the Captain was watching the Hellenic Beach? A. Well, let us say I assumed he was. I did not notice.

Q. Did you mention the Hellenic Beach again to the Captain between the time you came out of the chart room and the collision? A. Yes, I did.

Q. What did you say to the Captain? A. Something about getting closer.

Q. Did you say "That ship is closer"? A. I can say those were the approximate words.

Respondent's Exhibit F

Q. Did you say that loudly and emphatically? A. I suppose I did.

Q. It was a pretty exciting moment, wasn't it? A. For me, yes.

Q. It was a rather alarming moment, in fact? A. Once more I can say yes.

Q. You were bearing down on this approaching ship pretty rapidly, weren't you? A. Well, let me say that to me it seemed that she was bearing down on us, if that—

Q. You were approaching each other rapidly? A. We were approaching each other rapidly.

Q. And you were the burden vessel? A. At that time?

Mr. Estabrook: Objection.

By Mr. Batchelder:

Q. You were on the other vessel's port hand? A. I wouldn't be able to say that for sure.

Q. Did you see her red running light? A. I must have.

Q. And you were still at full speed ahead? A. On the telegraph, yes.

Q. Any reason to think that the engines were not going full speed ahead? A. No.

Q. And you have reason to believe that the bow was swinging to the right? A. Let me say that I assumed that she was swinging.

Q. That would be into the path of the approaching vessel, would it not? A. Well, if she had been, I suppose that would be into the path of the approaching vessel, yes, sir.

Q. You considered it a dangerous situation? A. Yes.

Q. What did the Captain say to you in regard to the approach of the Hellenic Beach? Did he make any mention of it? A. As far as I can remember, when I called his attention to the other ship his answer was, "All right."

Respondent's Exhibit F

Q. You mentioned this after you had come out of the chart room and before the collision? A. No. After I came out of the chart room I don't remember.

Q. You said that to him prior to your going into the chart room, that the Hellenic Beach was on your starboard hand? A. I believe that is in this testimony.

Q. And he said all right? A. Yes.

Q. But you don't recall calling his attention to the Hellenic Beach after you came out of the chart room? A. Yes, I did. I called his attention but I cannot recall an answer at the moment. I don't know. He may have and he may not have.

Q. He didn't say to the helmsman "Hard right" or repeat "Hard right" or give any indication that he was excited about getting further over to the right? A. I might have. I don't—

Q. Did he give any indication that he knew what was going on?

Mr. Estabrook: I object to the form of that question.

Mr. Batchelder: Go ahead and answer that.

The Witness: Will you repeat that?

(The last question was read by the reporter.)

A. That is a hard question for me to answer.

By Mr. Batchelder:

Q. I will rephrase the question. Did he give any orders to the helmsman or to the engine after you came out of the chart room, before the collision? A. As to orders to the engine, I can definitely say he did not give orders to the engine.

Q. He didn't change the engine's speed at all? A. No. To the helmsman, I just—I can't remember.

Q. He may have given some order? A. He may have.

Q. Which you couldn't understand? A. That I possibly didn't hear.

Q. There was a great deal of confusion going on, wasn't there? A. As you mentioned before, it was becoming exciting for me and I—

Q. Pretty alarming? A. Yes.

Q. You were going along at full speed? A. Yes.

Q. And you were turning into the path of an approaching vessel? A. I don't believe I said that.

Q. Well, when you made your swing to the right, wouldn't that swing to the right carry you into the path of the approaching vessel?

Mr. Estabrook: I object to that question on the ground that there has been no testimony as to "the right swing."

(At this point there was an off-the-record discussion, after which the following occurred:)

By Mr. Batchelder:

Q. Would the swing to the right which we have been—

Mr. Estabrook: "a swing."

Mr. Batchelder: I am going to qualify it.

Mr. Estabrook: I am going to object to the use of the word "the" in describing a swing to the right.

Mr. Batchelder: Well, let me finish the question. Then if you want to object, go ahead.

By Mr. Batchelder:

Q. Would the swing to the right which we have been talking about and which was presumably made after Mr. Giffin came out of the chart room have turned the vessel into the path of the approaching Hellenic Beach?

Respondent's Exhibit F

Mr. Estabrook: I object strenuously to the form of that question as not being a fair condensation or summary of prior testimony.

By Mr. Batchelder:

Q. Did you testify that you assumed the vessel was swinging to the right after you came out of the chart room? A. I did say I assumed that she was.

Q. You also testified that the Hellenic Beach was approaching on your starboard hand? A. I believe I did.

Q. Assuming your vessel was swinging to the right, then would the path of your vessel be in the path of the Hellenic Beach? A. If we assume the vessel was swinging to the right?

Q. Which you did assume.

Mr. Estabrook: I object to that statement. I think the question should be answered as originally put.

By Mr. Batchelder:

Q. I read you this question and this answer from the Coast Guard hearings in New York, page 106. (Reading:)

"Question: Up until you were 75 feet apart, do you mean to say that your vessel had been swinging to the right toward the other ship on your starboard bow? Answer: That's right."

Do you recall that question and that answer? A. I cannot recall it.

Q. Do you believe that answer to that question to be incorrect? A. You must realize I have had time to think over the situation. The things I might have felt then

would not necessarily be the way I feel now after having had time to review it in my own mind.

Q. How do you feel now? A. Now I am not sure.

Q. You don't know, then, whether you were turning right, toward the other ship on your starboard bow, until the time the vessels were 75 feet apart as you testified in the Coast Guard hearing? A. I cannot truthfully say that now.

Q. You don't know? A. I don't know.

Q. Did the Captain give any other order to the helm before the collision than the order which we have referred to about coming right? A. Yes. I do believe when he was aware that the collision was inevitable, he once more told the helmsman to bring her hard left again.

Q. How far were the vessels apart at that time? A. I would say that they were quite close.

Q. Had you made any suggestions to the Captain as to how to avoid the collision? A. As to how to avoid the collision? No, I did not.

Q. Did you say anything? A. I think it has already been stated that I told him we were getting closer; also, that I saw the red light on the starboard bow before that.

Q. You told him that? A. Yes.

Q. Pretty emphatically? A. Once more, it must have been emphatically.

Q. You were afraid there was going to be a collision? A. What time are we speaking of?

Q. I am speaking of all times after you came out of the chart room, before the collision. A. I will have to anwer yes to that. I think I should amend that.

Q. Go ahead. A. I should say I was afraid there would be a collision if immediate action was not taken.

Q. What immediate action did you think should be taken? A. I didn't—you are speaking of at that time? Well, I would say that one of the two of us should have gotten out of the way, or both.

Respondent's Exhibit F

Q. What did you think your vessel should have done? A. Of course, that would all depend upon the time, how close we were to each other.

(At this point there was an off-the-record discussion between Mr. Batchelder and Mr. Estabrook, after which the following occurred:)

Mr. Batchelder: Would you repeat the last question.

(The last question and answer were read by the reporter.)

By Mr. Batchelder:

Q. Do you recall where the Captain was standing between the time you came out of the chart room and the time of the collision? A. To the best of my knowledge he was in the forward part of the wheelhouse, somewhere close to the midships porthole.

Q. Nearer to the port side or the starboard side? A. Well, if it was near any side, it would be—actually, it would be closer to the center than any of it.

Q. Did you notice whether he was looking at the Hellenic Beach at any time during that period? A. It was dark that night

Q. At any time between the time you came out of the chart room, to the time of the collision, did he mention the approach of the Hellenic Beach? A. I do not recall any mention of it.

Q. He appeared to pay no attention to them at all? A. I didn't say that.

Q. Will you say that? A. I don't think I could.

Q. But he didn't mention it? A. I cannot recall any mention of it.

Respondent's Exhibit F

Q. Immediately prior to the collision was there an order given for hard left? A. I say I think there was.

Q. Did the Captain give that order? A. Yes; if it was given. I believe it was.

Q. In your opinion as a watch officer, what was the cause of the collision? A. (The witness paused.)

> Mr. Batchelder: Mr. Giffin, I would like to say for the record that I realize it is very difficult to testify against your former Master; simply for reasons of perfect honor, that it is hard to testify against a former shipmate. On the other hand, there has been considerable property damage and a number of very serious injuries and I think it is only right that the cause of them should be found.

By Mr. Batchelder:

Q. I ask you again, what in your opinion as a watch officer do you consider to have been the cause of the collision? A. The only answer I can give is the fact that we failed, both ships failed, to get out of each other's way.

Q. From the testimony which you gave at the Coast Guard hearing, I read you this question and this answer, page 110. (Reading:)

> "Question: In your estimation as the officer of the watch, what was the cause of this collision? Answer: Our vessel failing to get out of the way of the other, or to stop or reverse."

Did you so testify? A. If that is an official record of the testimony, I would imagine that is the way I testified.

Q. Do you feel that you want to change that testimony at this time? A. Once more, in view of the fact that I have had quite a bit of time for reflection, study, I would prefer to let this last answer remain as my answer.

Respondent's Exhibit F

Q. How long have you had a Second Mate's ticket? A. Almost two years.

Q. And you haven't been signed on as a Second Mate by American Export Lines in that interval? A. No.

Q. Have you applied? A. Well, in our case, we make no application. If the position is presented to us, we accept it, naturally.

Q. But you have been constantly employed by American Export every since this collison? A. Well, I have worked for no other company. I should have amended my previous answer to that question to say that I had put a few months ashore, and during that time I studied, I went to school, and I also got my license. And I had been ashore a few months but I worked for no other company.

Q. And you feel now that the answer which you gave on June 9, 1949, at the Coast Guard hearing in New York, was in error in connection with the cause of the collision — the answer which I read to you? A. I would not say that was in error. It is just that I wish to—

Q. You have thought of certain modifications to it? A. If you want to put it that way, yes.

Q. Well, I want to put it the way it happened. Is it a modification? A. In what manner do you mean modification?

Q. Is it a change from your former testimony? A. I will have to call it that.

Q. Arrived at by independent thinking on your part? A. I have done quite a bit of thinking about it.

Q. And it is now your opinion that the answer which you have given in this testimony is correct and the answer which you gave at the Coast Guard hearing was incorrect? A. I do not feel the answer I gave the Coast Guard was incorrect. I think you used the word "modification." I will accept that. This is a modification.

Q. And you now think that the Hellenic Beach should have done something to get out of the way of your ship,

Respondent's Exhibit F

which first turned left, next turned right, and then turned left, going at full speed?

Mr. Estabrook: I object to that last summary.

Mr. Batchelder: He has so testified.

Mr. Estabrook: I object, as not being a proper summary of the testimony. The question should be rephrased "Do you think the Hellenic Beach should have gotten out of the way of your ship?"

Mr. Batchelder: In order to form an opinion as to whether the Hellenic Beach should or could have gotten out of the way of your ship, you have to review the facts, that the Exmouth first went left, then went right, then went left, all at full speed.

Mr. Estabrook: I submit that that is not a proper summary of the testimony and, therefore, I object to the question.

The Witness: You still want it answered?

Mr. Batchelder: Yes.

A. I can only refer to the rules of the road once more, which state that the laws of good seamanship require any vessel when in doubt to get out of the way of the other vessel, in so many words.

By Mr. Batchelder:

Q. Were you fully acquainted with the rules of the road when you testified at the Coast Guard hearing? A. I believe so.

Q. There is no possibility that this modification has been suggested by your employers or your attorneys? A. Of course, the possibility is there but I would not say that happened.

Q. You wouldn't say it didn't happen? A. I beg your pardon?

Respondent's Exhibit F

Q. You wouldn't say it didn't happen? A. Well, leave it at that.

Q. Immediately after the collision, what did you first do? A. I believe my testimony states that I put the engine room telegraph on "Stop" and—

Q. You don't want to modify that, do you? A. No. I am quite definite on that.

Q. And then what did you do? A. And I stepped outside the wheelhouse to help the Captain to his feet. He had been knocked over by the force of the collision.

Q. And what did he say to you, and what did you say to him? A. Again, I think the words were, he said, "I didn't see them." It is in the testimony.

Q. Did he say that once or more than once? A. Probably more than once.

Q. At that time did you smell his breath? A. At that time, no. I do not recall smelling his breath at that time.

Q. And had you smelled his breath prior to that time? A. Yes.

Q. While you were on watch this particular night? A. Yes.

Q. Have you smelled the breath of people who have drunk intoxicating liquor? A. I have.

Q. Are you acquainted with that smell? A. I am.

Q. Would you say, in your opinion, that the Captain had been drinking? A. I believe my words were at that time "He gave the appearance of having been drinking."

Q. Would you describe the actions or other evidence that led you to that belief? A. Well, unsteadiness on the feet, perhaps a little incoherence in the talk.

Q. Anything else? A. Are you speaking of generalities?

Q. No. Any specific evidence that led you to the belief that he had been drinking. A. You are speaking now of the Captain?

Q. Of the Captain. A. I believe I said I smelled liquor on his breath, at that time. This is before the collision.

Respondent's Exhibit F

Q. While you were on watch? A. While I was on watch.

Q. When he had come up on the bridge? A. Yes.

Q. During a period immediately prior to the collision, after you had come out of the chart room, I believe you testified that it was a pretty exciting moment and that you were alarmed? A. Yes.

Q. Did it occur to you to sound the general alarm signal at any time in that period? A. To sound the general alarm system? No.

Q. After reflection of three years, has it occurred to you that that might have been the thing to do? A. In the first place, you realize that I am a better watch officer on the ship—you called me that. And the Master is in complete command when he is on the bridge. It has been my own personal policy not to do anything unless I receive the command to do so.

Q. In your experience, have you ever made a suggestion to your commanding officer while he had command on the bridge, that certain actions be taken which you felt were advisable? A. I have made suggestions, yes.

Q. Did it occur to you to suggest that the general alarm system be rung? A. At that time, it did not occur to me.

Q. Upon reflection, do you think that the general alarm system should have been rung? A. I think—I don't think the bell should have been rung, on reflection, at that time.

Q. Would you mind giving us your opinion as to why it should not have been rung? A. We settled the fact that things were exciting, and yet nothing had happened. Supposing I had rung the bell and everyone would have been excited and somehow or other we might have gotten out of it, and things would be pretty foolish about that time. That is after reflection, too.

Q. If you had rung the general alarm and, as it happened, a collision did occur, men might not have been injured that were injured, is that not true? A. On the other hand, there might have been more men injured.

Respondent's Exhibit F

Q. Why do you say that? A. More people moving at that time, as soon as the alarm rings; get out of bed, all excited, and so forth.

Q. What if the vessel had been holed so severely that she would have sunk? It would have been a lot better to have rung the general alarm, wouldn't it? A. This, of course, is my personal opinion you are asking for? I still say if you had rung a general alarm you would have had more excitement, more men running around. Now, of course, I can't understand what this has to do with it but I will answer your question. Perhaps I do understand. If this collision would have holed her sufficiently, as you say, that would have aroused everybody, anyway. It would have been enough.

Q. A little late, perhaps, though? You think there was less danger of people becoming excited if they were awakened by the collision than if they had been awakened by the general alarm bell? A. And still you think the collision would have happened? Is that your—

Q. Well, the collision did happen. A. Well, of course, but I mean we are speaking now of hypothetical questions.

Q. Well, didn't you think—as you say, it was an exciting situation, and I believe you also said that the vessels were approaching each other rapidly, and the Captain had made no move to avoid the collision—that the collision was inevitable? A. After a period of time, yes.

Q. How long before the collision did you think it was inevitable? A. The realization hit me just before it happened.

Q. Didn't you realize that the Captain was incapable of commanding his vessel so as to avoid a collision? A. I don't think I realized that.

Q. It was a strong possibility of that, though, wasn't there?

Mr. Estabrook: I object to the form of that question.

Respondent's Exhibit F

By Mr. Batchelder:

Q. During that period from the time you came out of the chart room to the time of the collision, the Master gave one order to the helsman, as I recall. Is that correct? A. To get back to the testimony, I say there were two orders.

Q. After you came out of the chart room? A. Well, after or during the time I was coming out.

Q. As you came out of the chart room he said "Come right" but between the time he gave that order and the time of the collision, he gave only one order to come left, is that correct? A. To the best of my knowledge.

Q. Well, you were there? You were hoping something was going to happen that would avoid the collision? You must have been hoping that the Captain would say something? A. I say to the best of my knowledge, yes.

Q. You were hoping the Captain would do something, weren't you? A. Well, naturally.

Q. And he didn't? A. Up till what time do you refer?

Q. Until it was too late. A. Let's say that I didn't notice him do anything or say anything.

Q. And you were looking for him to do something, weren't you? A. I suppose I was.

Q. You were certainly hoping against hope that he would do something?

Mr. Estabrook: I object to the form of that question.

By Mr. Batchelder:

Q. I will give you a sheet of paper and two models and I will ask you to place the models in the position which you believe the vessels were in at the time of collision. A. Is that the instant of collision?

Respondent's Exhibit F

Q. At the instant of collision. A. (Witness placing models on sheet of paper.) Somewhere along here.

Q. Now, would you trace around each of the models, marking them "E" for Exmouth and "HB" for Hellenic Beach. A. (Witness complying) I think that is about the way it is.

Mr. Batchelder: I offer that for identification.

(The drawing referred to was marked Libelant's Exhibit 3.)

By Mr. Batchelder:

Q. Would you say that the angle between the starboard sides of the two vessels was approximately 65, 70 degrees? A. Let me look at that again.

Q. The angle between the starboard sides of the two vessels.

(At this point there was an off-the-record discussion, after which the following occurred:)

By Mr. Batchelder:

Q. Would you say that the angle between the starboard sides of the two vessels was approximately 60 degrees? A. Yes.

Q. Now, I offer you another sheet of paper and models, and I would like to have you place the models in the relative positions of the vessels when you came out of the chart room. If you can give me the approximate distance apart, you might write that on the sheet, too. I am primarily interested in the bearing, relative bearing. A. (Witness tracing, after placing models on sheet.)

Q. Would you mark those "E" for Exmouth, "HB" for Hellenic Beach. A. Once more, I must say, this again is approximate.

Respondent's Exhibit F

Q. I realize that. A. (Witness marking) This is when I came out of the chart room?

Q. Yes. When you first sighted the Hellenic Beach after you came out of the chart room. A. Again I will label this approximate.

Q. Just write "approximate" down. A. (The witness complied.)

Q. What do you estimate the bearing, relative bearing, of the Hellenic Beach from your vessel, at approximately one mile away? A. I can't—

Q. Either from that drawing or from your recollection. A. I can only give you a bearing from our bow, sir.

Q. That is what I mean, relative bearing. A. And this was as I came out of the chart room?

Q. When you first looked up and saw the Hellenic Beach, after you came out of the chart room. A. You want that on here or verbally?

Q. Verbally. A. I will say from three to four points.

Mr. Batchelder: I will offer that for identification.

(The drawing referred to was marked Libelant's Exhibit 4.)

By Mr. Batchelder:

Q. If you had continued to swing right as you have assumed you were doing when you came out of the chart room, is it now your opinion that the collision would have been avoided? A. You did say that I assumed that we were swinging right? I do not wish to state actually and emphatically that we were swinging right.

Q. No, I realize that. We discussed that. A. Once more, you want my opinion, personal opinion? (The witness paused.) I find it difficult to answer.

Respondent's Exhibit F

Q. As the burden vessel, it was your duty to keep clear of the Hellenic Beach, was it not? A. While we were the burden vessel, yes.

Mr. Estabrook: I object. I would just like to state for the record my opposition to this line of testimony, asking the witness to determine one of the issues of the case.

By Mr. Batchelder:

Q. On Libelant's Exhibit 4 for identification, you approximated the distance of the Hellenic Beach away when you came out of the chart room as one mile on your starboard bow three to four points. If you were coming right and continued to come right, you would pass under the stern of the Hellenic Beach, would you not, under those circumstances? A. If we were coming right?

Q. Not assuming that you would go around the compass as you almost did before. A. If we were coming right and we cleared the other ship, that is what you have in mind?

Q. That is what would have occurred? You would have gone under the Hellenic Beach stern? A. Well, we probably would have passed port to port, don't you think?

Q. Which would have been the proper maneuver under the circumstances, would it not? A. Yes.

Q. In fact, that is what you thought was going to happen, wasn't it? A. Yes.

Q. Or did you know what was going to happen, with that Captain?

Mr. Estabrook: I object to the question.

By Mr. Batchelder:

Q. That is what you thought was going to happen? A. That we would pass port to port if we were to swing right.

Respondent's Exhibit F

Q Under those circumstances, you wouldn't have needed to slow down? A. No.

Q. Would have passed safely? A. Yes, if we had passed port to port.

Q. There was nothing that you could see that made that maneuver dangerous in any way, was there? A. Which maneuver?

Q. Of coming right and passing under the Hellenic Beach's stern? A. No. Assuming that we were making a swing.

Q. If you had changed that swing, there wouldn't have been anything dangerous about it? A. I don't think so. You must, of course, consider the fact that—the degree of rudder the vessel has, and the amount of time it takes to get started. The underswing will make some difference along there.

Q. But in your opinion one mile away you could have swung under the stern of the Hellenic Beach? A. Well, we could have passed port to port.

Q. That is what I mean, yes. Did you consider blowing a whistle signal to the Hellenic Beach to indicate a port to port passing?

Mr. Estabrook: I object to the form of the question.

By Mr. Batchelder:

Q. Did you blow a whistle signal to indicate a port to port passing?

Mr. Estabrook: I object to the form of the question.

By Mr. Batchelder:

Q. Did you blow any whistle signal? A. I blew none.

Respondent's Exhibit F

Q. Did the Captain blow any? A. Yes.

Q. What signals did he blow and when? A. As I recall it, I remember saying I heard two.

Q. Immediately prior to the collision, within seconds of the collision? A. Well, let's say immediately prior to the collision.

Q. But not a minute before the collision? A. I couldn't say that with certainty.

Q. Well, was it less than a minute or more than a minute? A. I would have to say less than a minute.

Q. Did you suggest that he blow those two blast signals? A. No, I did not.

Q. Do you think that a two-blast signal at that stage was the proper signal? A. In my own mind, I am not sure whether that was intended to be a two-blast signal. There might have been more.

Q. Well, viewing the situation as you were doing at that point, did whatever signal you hear make sense? Did it seem a proper signal in the situation as you saw it? A. It could have been intended as a danger signal.

Q. It was a danger situation, anyway? A. That is agreed, and if—

Q. Possibly a little late? A. If the intention was the danger signal, then of course there was nothing wrong with it.

Q. When he blew that signal, did he give any orders to either the helm or the telegraph? When I say orders to the telegraph, I mean to you; you were presumably near the telegraph. A. None to the telegraph. I believe we have established the fact that he had given the left wheel I think that was still in effect at that time.

Q. "Left wheel" was still in effect, or it went into effect when he blew the whistles? A. Once more, I can't say with certainty because I don't remember.

Q. Do you recall hearing him give an order of "Left wheel"? A. I don't recall hearing it.

Respondent's Exhibit F

Q. But you are under the impression that an order was given? A. I would say that, yes.

Q. And you didn't give it? A. I did not.

Q. Did you give any orders after you came out of the chart room, before the collision? A. I cannot recall any.

Q. Did you make any suggestion to the Captain during that period? A. I believe I said that I called his attention once more to the ship.

Q. But you made no suggestions as to maneuvers which might be adopted by your vessel? A. I did not.

Q. Did you think the Captain had the situation well in hand? Is that the reason you didn't give any suggestions?

Mr. Estabrook: I object to the form of that question.

Mr. Batchelder: Go ahead.

A. Let me say at that time there was no such thing as having any situation in hand.

By Mr. Batchelder:

Q. You mean the Captain didn't have any situation in hand? A. At that time, no one did. The Captain on the other ship didn't.

Q. You don't know that the Captain on the other ship didn't? A. Perhaps I am assuming as you have been doing.

Q. But you don't think that your Captain had the situation in hand?

Mr. Estabrook: I object to the form of that question.

Mr. Batchelder: Go ahead.

A. I still have to answer I don't think anybody had any situation in hand.

Respondent's Exhibit F

By Mr. Batchelder:

Q. Well, certainly the situation on the Exmouth was not in hand when the Captain didn't make any maneuver to avoid a collision and apparently was giving incoherent orders and conflicting orders— A. Do you expect an answer to that?

Mr. Batchelder: Put "No answer", please.

Mr. Estabrook: I object to that comment and point out that there was no question; a statement by Mr. Batchelder as to what he believed the situation to be.

Mr. Batchelder: Let's read it again, and see what it was. I presume that there is a question mark at the end of that.

Mr. Estabrook: If you would like the witness to say whether that was correct or incorrect, then he may have to answer that—

The Witness: I did take that as a statement.

By Mr. Batchelder:

Q. My question was: Was that a fair representation of the situation at that time? A. Perhaps no. I have had an opportunity to speak to the Captain after that and he has told me he intended to swing to the left, and so forth.

Q. Is that your answer? A. Yes. I think that is my answer.

Q. Isn't it your honest opinion that the Captain was incapable of commanding his vessel at that time. A. Once again I will have to answer that by saying I am merely a junior officer. I am not capable of questioning any man's ability that has a rank over me. I am subject to his orders.

Respondent's Exhibit F

Q. You were subject to his orders but you are not now. In your honest opinion, wasn't the Captain drunk at the time of the collision?

Mr. Estabrook: I object to the question, on the ground that it is not shown that the witness is medically qualified to determine whether a man is intoxicated.

Mr. Batchelder: I am asking for his opinion.

By Mr. Batchelder:

Q. In your opinion, was the Captain drunk? A. That question, that very same question, was put to me in the same manner, before. Let me say that I had reasons for believing so at that time. But he was knocked over, banged his head. I found this out later on.

Q. He didn't bang his head until after the collision? A. Now, are you asking me before the collision or afterward?

Q. I am asking you before the collision. A. You used the word "drunk." Will you define that for me, please, accurately?

Q. Well, perhaps I should rephrase the question, then. Do you think he was under the influence of liquor to such an extent that he could not command his vessel? A. No. I don't honestly feel that. I don't feel that way. I don't think that way.

Q. You think that he was capable of command of his vessel? A. Yes.

Q. Although you do not believe that he gave the correct order to avoid the collision? A. Now, you said to avoid the collision?

Q. Well, to avoid the other ship. A. I would divide that into two parts, myself. In the one case where we are coming up to the light ship and so forth; and the

other part, where the two vessels were so close together that—

Q. All right. Give me your opinion as to the first situation. A. I believe I have stated that between that time I thought that the orders were not rational.

Q. At the time you were approaching Overfalls is the time you were referring to? A. I believe the words to use would be: "at that time." I rephrase that.

Q. But you think the orders after that time were rational? A. Once more, what do you mean "after that time"?

Q. Well, you have set up two classifications, the time that you were approaching Overfalls and the time after Overfalls.

> Mr. Estabrook: I believe we would save time if you would call the witness' attention to the specific orders that were given.
>
> The Witness: That is what I had in mind, because I remember saying that I didn't specifically hear any. I had assumed we were going left. This was—

By Mr. Batchelder:

Q. You assumed you were going left when? A. The order for hard left was given by the Master.

Q. Just prior to the collision? A. Yes. So if that is the case, why, I—

Q. Was that a rational order? A. At that time, it might have been.

Q. Although, prior to that time, if you had gone right you would have had a port to port passing, isn't that correct? A. That is correct.

Q. And at some time, a hard left order became the proper one, is that correct? A. I would say yes.

Respondent's Exhibit F

Q. Why was that? Because it was too late to come right? A. Yes.

Q. Although you had been presumably going right before that? A. As I say, I had assumed that we were going right.

Q. Upon reflection, do you think now that you hadn't been going right? A. Upon reflection, I can't say one way or the other.

Q. You really don't know what the helm was doing at that time, now? A. I do not.

Q. Do you think the Captain knew? A. How can I answer a question like that?

Mr. Estabrook: That is a perfect answer.

By Mr. Batchelder:

Q. You did hear an order of hard right after you came out of the charthouse? A. Yes, I believe I did.

Q. And that was how many minutes before the collision, would you guess? A. (The witness shook his head.)

Q. Well, can you approximate it? Would it be two minutes before the collision? A. May I say five minutes?

Q. You think it was five minutes before the collision? A. Again, this is an approximation. I—I just—(sentence not completed.)

Q. If this order was given approximately five minutes before the collision to come hard right, the ship would definitely swing right in five minutes, wouldn't it, if the order was carried out? A. In five minutes, yes.

Q. And you didn't notice any swing of your vessel's bow during those five minutes? A. I must say that I just I did not notice.

Q. But you were looking at the Hellenic Beach, were you not? A. I was watching her, yes.

Respondent's Exhibit F

Q. And you were probably trying to determine whether you were still on a collision course, were you not? A. Probably.

Q. Do you recall whether the bearings of the Hellenic Beach were constant during that period? A. To the best of my recollection, the bearing changed very little, if at all. I just can't remember any change in the bearing.

Q. Do you recall whether you brought that fact to the Captain's attention? A. No, I don't recall that.

Q. It was pretty important, though, wasn't it, because that indicates that you are on a collision course, doesn't it? A. Yes, it was. I think I should remind you that I probably had said that she is getting closer. I don't know how many times I said it.

Q. You said it more than once? A. I say, I don't remember how many times.

Q. Did you testify before the Coast Guard on August 16, 1949, in connection with—

Mr. Estabrook: I object to anything further of the question, as an attempt to put on the record indirectly what should not go on directly.

Mr. Batchelder: I am going to finish the question.

By Mr. Batchelder:

Q. (Continuing) —which was a proceeding solely concerned with the right of the Master of the SS. Exmouth to retain his license?

Mr. Estabrook: I object to that question as being improper. It is an attempt to smear the issues of the case.

Mr. Batchelder: Would you answer?

A. I was at a Coast Guard hearing.

Respondent's Exhibit F

By Mr. Batchelder:

Q. Did you testify? A. I testified.

Mr. Batchelder: I think that is all.

Cross-examination by Mr. Estabrook:

Q. Mr. Giffin, what happened after the collision? A. In what respect?

Q. What did you do? A. Well, as I say, I put the engine room telegraph on "Stop", stepped out and I helped the Captain to his feet. He had been knocked off his feet by the force of the collision.

Q. Then what did you do? A. I believe I suggested then that we sound the general alarm.

Q. And was that done? A. Yes.

Q. Then what did you do? A. I think my next step was to inquire from the Captain as to whether I should assist in getting the boats ready in case they were needed.

Q. And did the Captain answer you? A. Yes.

Q. What did he say? A. He told me to go ahead.

Q. And then what did you do? A. I went down on the boat deck—

Q. Which is located where, in relation to the wheelhouse? A. Well, that would be two decks below.

Q. Is it out in the open? A. In the open, yes.

Q. What did you do there? A. Oh, I would say assisted in general, helping to get the covers off.

Q. Then what did you do? A. While I was in the boat helping to take the covers off, somebody commenced lowering the boat and we found ourselves in the boats, in the water.

Q. Then what did you do? A. I believe about that time the Chief Mate came around and told all hands to get out of the boats up on deck, so I came up on deck. Then I went back to the bridge, as far as I can recall.

Respondent's Exhibit F

Q. And how long did you stay on the bridge? A. From then on until the end of my watch at four o'clock in the morning.

Q. What lights was the Exmouth showing before the collision? A. You speak of while we were under way?

Q. Yes. A. Well, the white masthead range light, the red and green side lights and the stern light.

Q. And at the time of the collision, did the Exmouth lights go out? A. Yes, all the lights went out.

Q. And how long did they stay out? A. I have no idea. I can't remember how long it was.

Q. Was anybody injured in the collision? A. I did not see the injured men.

Q. Were reports made to you as watch officer that people were injured? A. That two persons were injured.

Q. What did the Hellenic Beach do after the collision? A. I believe also I testified that after she hit, I saw her bounce along the stern of our vessel, the starboard quarter, and off in the stern.

Q. Is that what you saw? A. I saw that part, yes.

Q. Did you see any flashing light signal from the Hellenic Beach? A. No, I did not.

Q. Did you, as watch officer, receive any message from the Hellenic Beach? A. I did not.

Q. Did you as watch officer receive any message by flashing light or otherwise, from the Hellenic Beach, that she was to stand by and take off the injured men? A. I did not.

Q. Did you receive any inquiry whatsoever from the Hellenic Beach as to the condition of the Exmouth? A. No.

Q. Did the Exmouth have radar? A. No, no radar.

Q. I show you a folder consisting of 16 photographs and ask you whether those photographs are a fair representation of portions of the Exmouth after the collision. A. (Witness examining photographs) There seems to be

two photos here, Mr. Estabrook; I refer to the one in the engine room—is that right—somewhere along in the engine room; also, this is below decks somewhere, seems to be the storeroom. I did not go down, I did not see that. As far as the others, I did; I would answer yes.

Mr. Estabrook: I offer a folder of 14 photographs as Respondents' Exhibit A, and I am removing the two photographs which the witness cannot identify from the folder. Offered for identification.

(The folder containing 14 photographs referred to was marked Respondents' Exhibit A for identification.)

By Mr. Estabrook:

Q. I show you Libelant's Exhibit 1 for identification, a photostat of the Exmouth's rough deck log, is that correct? A. Yes.

Q. And is that a photostat of a document kept on board the Exmouth in due course of business? A. The word "document," I—

Q. Well, was the logbook of which that is a photostat kept on board the Exmouth in the due course of the ship's business? A. Yes.

Q. And does that logbook contain entries made in your own handwriting which are photostated? A. Yes.

Q. I show you Libelant's Exhibit 2, stated to be a photostat of the Exmouth bellbook. Was the book of which that photostat is a copy, a book kept in the due course of the ship's business on board the Exmouth? A. As to her maneuvering, yes.

Q. And that book is kept in accordance with the regular course of the ship's business? A. Yes.

Q. And does that photostat contain copies of entries made in your own handwriting? A. It does.

Mr. Estabrook: No further questions.

Respondent's Exhibit F

Redirect examination by Mr. Batchelder:

Q. When the collision occurred, what was the visibility? A. At the time of the collision, let me say that the fog was setting in again. The visibility was restricted.

Q. After the collision, did you see the Exmouth after she had cleared your stern? A. The Hellenic Beach?

Q. Hellenic Beach. A. No. When she disappeared off the stern, I did not see her at all.

Q. What would you say the visibility was at that time? A. I am at the time she disappeared off the stern? This again is a rough estimate. I would say a mile or two.

Q. A mile or two? A. Now, this I would like understood: I said she disappeared off the stern. I saw her bounce along the starboard quarter. Now, activity was about, and I did many things during that time, as I say, going down to the boat deck and so forth. So the next time I did look for her, she had disappeared in the fog.

Q. Could you see any lights on either the light vessel or shore objects after the collision? A. I do not recall any. Once again, I want it understood I was not particularly looking for any at that time.

Q. You didn't see the Hellenic Beach after the collision? A. After she disappeared off the stern, I did not.

Q. Was the portion of the deck log reporting the portion of your watch from 2:00 A. M., on and appearing on supplementary page for June 5th, written in your handwriting? A. This is termed an exhibit, the exhibit you have and refer to?

Q. Yes, as Libelant's Exhibit 1. A. The supplementary sheet is in my handwriting.

Q. Do you recall when you wrote that portion of the log? A. Yes, although I can't tell you what time it was. I do recall gathering to write that u[illegible].

Q. When do you think that gathering took place? A. As you know, I have had a chance to review the testimony, some of it. I believe it was stated that it took place about six A. M.

Respondent's Exhibit F

Q. Of the morning of the collision? A. Of the morning of the collision.

Q. Do you now believe that that was about when it took place? A. Yes, I do.

Q. Who was present at this gathering? A. The Master, the Chief Officer, myself, I believe the Junior Third Officer was there, and also the Purser.

Q. Mr. Giffin, has any employee of the respondent American Export Lines asked you to make any modifications to the testimony which you gave before the Coast Guard if you were called upon to testify in this action? A. No, sir. No one has, no one at all.

Mr. Batchelder: That is all.

I, T. M. Phlegar, Court Reporter and Notary Public for the State of Virginia at Large, on April 24, 1952, contacted Mr. Thomas M. Johnston, of the law firm of Hughes, Little & Seawell, stating the necessity of having the witness, Bernard E. Giffin, sign his deposition in the case of Hellenic Lines, Limited, etc., vs. Steamship Exmouth, etc., et al.

Thereupon, Mr. Johnston advised me that he would contact Mr. Garcia of American Export Lines in an effort to locate the witness. Shortly thereafter Mr. Johnston called and stated to me that he had received information from American Export Lines and Bernard E. Giffin had signed off the ship and could not be located.

Having been advised by Mr. Batchelder's office of the necessity of having the deposition in New York by Monday, April 28th, the original deposition and copies are being forwarded, without signature, to the parties as of this date, April 26, 1952.

.....

Notary Public

My commission expires
November 14, 1953.

Stenographer's Fee, $118.00.

Respondent's Exhibit G

FELIX F. MULLNER, called as a witness on behalf of the defendant American Export Lines, being duly sworn, testified as follows:

Direct examination by Mr. Estabrook:

Q. Mr. Mullner, you are now a boatswain's mate, second class, United States Coast Guard, are you not? A. Yes, sir.

Q. Where are you stationed at the present time? A. Atlantic Beach Lifeboat Station, Long Island.

Q. Where were you stationed on June 5, 1949? A. Overfalls Lightship.

The Court: Where?

The Witness: Overfalls Lightship, Lewes, Delaware.

Q. Where is Overfalls Lightship located? A. Just a little over 3 miles off of Hen and Chicken Shoals, off Cape Henlopen.

Q. Is that the entrance to Delaware Bay? A. Yes, sir.

Q. Were you on that lightship on the morning of June 5th? A. Yes, sir.

Q. Were you on watch on that morning? A. Mid to four.

Q. Midnight to 4 a.m.? A. Yes, sir.

Q. What was your duty during that time? A. Well, you have a radio beacon which the ships pick up in case of foggy weather, and all that. It is more or less for your own protection, I mean, somebody is going to run you down, you are sitting out there like a sea gull, anyway.

Q. Were you a lookout or were you officer of the deck, or were you radio operator? A. I was more or less lookout.

The Court: He wants to know what the lightship's function was.

Respondent's Exhibit G

Is that what you want to know, Mr. Estabrook?

Mr. Estabrook: Yes.

The Court: What is the job of the ship there?

The Witness: Well, you check radio beacons, punch the clock, and all that, lookout.

The Court: Why is the ship there?

The Witness: For the fog—I don't know how to put it—as the fog horn and the light, and all that. It is an aid to navigation.

The Court: It is an aid to navigation.

The Witness: That is one way to put it.

The Court: For the benefit of other ships.

The Witness: That's right.

Q. Did you see a collision that morning? A. Yes, sir. About a little after 2, six minutes after 2 o'clock in the morning.

Q. How was the weather then? A. Clear. Visibility was 18 to 20 miles at the time they collided.

Q. Had it been foggy before then? A. Yes, sir.

Q. Was it foggy after that? A. Yes, sir.

Q. How was the wind? A. Offhand, I couldn't tell you.

Q. Now, will you describe in your own words what you saw at that time? A. Yes, sir.

Q. Tell us, please. A. From the time I first seen the Exmouth and—

Q. Yes, exactly what you saw and what you heard. A. Well, the times—this has been three years ago, and the times on that I forget offhand, and—well, the Exmouth was coming out of a westerly direction; we were anchored and the ship swings with the tide, and we were facing in a southerly direction. The Exmouth was coming down this way, westerly, and she come across to the lightship, and for that simple reason I kept my eye on her. I went outside and kept looking; and then after she got in a ways toward the beach there, I noticed the Hellenic Beach com-

ing up; at that time I didn't know what the names of the ships were.

Q. Yes? A. But from that point the Hellenic Beach, she left the pilot off, or something, and she was just starting up out of the mouth of the bay there, and she was coming in a southerly direction, and the Exmouth would just cut across the bow. At that time I think when he left the pilot off and just started off, and from what I seen, the way they was going, I knew about three minutes before they hit, I knew she was going to hit, and, well—

Q. Did you hear any whistle signals? A. Just before they hit, I don't know whether both of them was blowing, or what it was, but they was blowing.

Q. Was it about 10 seconds or 20 seconds before they hit, or a minute? A. Just before they hit. I would say 10, 15 seconds just before they hit.

Q. Now, did you notice any change of course on the part of the Exmouth from the time she left the lightship? A. After she passed the bow of the lightship, she bore a little over to the left, westerly, and she stayed on that.

Q. Did you notice any change of course of the Hellenic Beach? A. No, sir.

Q. Did you notice either ship back down before the collision? A. No, sir.

Q. Do you think you could draw it on this board here, Mr. Mullner? A. The way she was coming, and you know—

Mr. Dow: Excuse me. I would like to preserve that. I want that in my summation, if I could have it.

The Court: Well, could we use the other part of the board then?

Mr. Dow: Could you use the corner of it, or something?

The Court: No, we will get another board then, if we can find one.

While they get the other board, I want to ask the witness one question:

Respondent's Exhibit 6

By the Court:

Q. You say you heard a blast 10 or 15 seconds before the actual collision? A. Yes, sir.

Q. Was that the only blast you heard? A. That is all.

Q. Was there more than one blast? A. They was in a series like—well, like one after the other, you know.

Q. Do you know who was giving the blast? A. No, sir.

Q. From where you were standing you couldn't tell? A. No, sir.

Q. You are sure that the only blast you heard was 10 or 15 seconds before the point of actual collision? A. Yes, sir.

By Mr. Estabrook:

Q. While we are waiting, Mr. Mullner, were you interviewed by our correspondent, Mr. Alspach? A. Yes, sir; from Philadelphia.

Q. Was that on June 9, 1949, four days after the collision? A. Yes—well, I was home at the time when he came up to the house. It was just a couple of days after it happened he come on up.

Q. What lights did you see on the Exmouth? A. When I first seen her?

Q. Yes. A. Port and starboard.

Q. Were they port and starboard running lights? A. Yes, sir; running lights.

Q. And did you see her white lights? A. White lights, masthead lights.

Q. What lights did you see on the Hellenic Beach? A. When she first come up I seen her port light, the red one.

Q. And the mast headlights? A. And the mast headlights.

Q. Mr. Mullner, would you come over here, please?

(Witness complies.)

Respondent's Exhibit G

Q. Now, Mr. Mullner, here is some chalk. I suggest you draw the lightship about in the middle, to start.

(Witness complies.)

Q. Which way is north, Mr. Mullner?

(Witness indicates on blackboard with arrow.)

Q. The lightship was heading south. How was the tide running? A. The tide was running in, because the bow of the lightship, it swings with the tide.

The Court: Can you all hear that? You will have to talk louder, Mr. Mullner. Members of the jury have to hear you, so talk up loudly.

A. When the tide turns, the ship automatically swings with it. It is always headed into the tide. It is never against it, but it is at anchor and it is just riding there.

Q. Now, which way was the Exmouth going? A. Coming this way, westerly.

Q. Show how the Exmouth passed the lightship. A. Well, when I first noticed her she was coming in right, right in this area I would say here; she was coming over this way, and then when she passed the lightship, she just barely, just a little—this is the beach here—that is the Hellenic Beach (indicating on board).

Q. And how far did the Exmouth pass the lightship? A. About less than a third of a mile.

Q. And how far from the lightship do you believe the collision occurred? A. I would say, well, it was a mile off the beach from this point to this point, and just a little over 3 miles, because you got to get that 20 per cent sea pay, you got to be outside the 3-mile limit, so I had to be 3 miles out; right?

Respondent's Exhibit G

The Court: In other words, the lightship was 3 miles—

The Witness: Just a little over 3 miles.

The Court: —off shore.

The Witness: Yes, sir.

The Court: Off the 3-mile limit.

The Witness: That is coming from this point here, from the nearest point, they take out.

Q. And how far was the collision from the lightship, as far as you could tell? A. About 2 miles.

Q. Now, after the collision, could you see what happened? A. Well, as soon as they hit, well, first I seen the lights go out and you could see them with your naked eye.

Q. The lights were which? A. On the Exmouth, went out.

Q. Yes. A. At the time I don't know which ship laid there, you know, but I knew how she was coming and then I heard the crash—that was after I seen the lights go out. It takes time for sound to travel.

Q. Then what happened? A. Then the Hellenic Beach drifted back from toward Harbor of Refuge, and the last time I seen Exmouth, well, she was anchored there; they dropped the anchor, and about 2:30 the fog set in again, so I didn't see them until the next day, next afternoon, I believe it was, when the Exmouth was under her own power again, proceeding to New York, or wherever she was going.

The Court: What is that "X" you just put down?

The Witness: That is where they hit.

The Court: How much offshore do you estimate that to be?

The Witness: What was that, sir?

Respondent's Exhibit G

The Court: How much offshore do you estimate that to be?

The Witness: That is a mile, a little over a mile because it was about two-thirds of the way in from the lightship; you see, from here to here is 2 miles and from here to here is 1 mile. That would bring it just about right.

The Court: Do you all see that?

(Jury nods assent.)

Mr. Estabrook: No further questions.

Cross-examination by Mr. Dow:

Q. You can stay where you are, Mr. Mullner. You are Felix F. Mullner, Jr., aren't you? A. Yes.

Q. You say, Mr. Mullner, that this accident happened about 2 miles off your lightship? A. Yes, a little more than 2 miles I would say.

Q. So there was, from your experience, about 2 miles distance between the Hellenic Beach at that time and your lightship? A. You mean from the point, actual point of collision?

Q. Yes, to the lightship. A. It was about a litle over 2 miles, I would say, just a little.

Q. So there was plenty of room, wouldn't you say, for the Exmouth to go between the Hellenic Beach and the lightship? A. That's right.

Q. In fact, there were 2 whole miles of room: right? A. Yes, sir.

Q. And there was still another mile over on the beach before you got to Hen and Chicken Shoal? A. You can't go in too close there because you got the shoal there.

Q. Right. Now, at the time the Exmouth came up and you saw both her running lights, indicating, I suppose, she was heading right for you, I suppose, right? A. Yes.

Q. You were on the right there? A. Yes.

Respondent's Exhibit G

Q. And just about the position you have got the Exmouth there now, she was steering—what would you say her course would be there? A. Her course—

Q. About 310, 315?

The Court: Don't lead him.

A. I would say about—

Q. This is the Exmouth now. A. About 285, 290. It would be in there some place that I would take it.

Q. So you think it was closer to 300 than it was to 260? A. It was closer to 300 than it was to 260?

Q. Wouldn't you say so, or would you? A. Take a look. A. (After drawing diagram on board.)

The Court: He is figuring it out himself.

A. Yes, it would be closer to 300. There is 270, say, here.

Q. At that point she cleared, on that heading she cleared the lightship? A. Yes, sir.

Q. Then she had two whole miles of room? A. From there?

Q. Up to the— A. Usually when they come in, they come—well, they pass the bow or the stern, it all depends which way the tide is going, and as soon as they pass that they usually swing up, see, but she kept right on going, just bore a little to her left and kept right on going.

Q. That is just the point, Mr. Mulhner. Have you any idea why instead of doing as ships usually do, go on up to the pilot station, why she swung to her left and went across to the other side? A. I don't know.

Q. And from where you were, 2 miles away, you saw the red light of the Hellenic Beach, didn't you? A. Yes, sir.

Q. And you saw her range lights? A. Masthead lights, yes.

Respondent's Exhibit G

Q. Now, at 2 miles away, if the Hellenic Beach went astern, you couldn't have seen it, could you? A. No, sir.

Q. And you heard a series of short sharp blasts; you don't know what ship they came from? A. No.

Q. Did you, after the collision, did you see any blinking? A. Not that I recall. There was no lights of the Exmouth, anyway.

Q. Did you see the pilot boat blinking? A. No, sir; she was up the bay.

Q. You couldn't have seen her if she did? A. Well, if she would have been blinking, I most probably would have seen her, but I was attracted to where the point of collision was. I wasn't, you know, looking around.

Q. You weren't looking up at the pilot boat at the time. A. No, sir.

Mr. Dow: Thank you very much, Mr. Mullner.

The Court: Any further questions by anybody?

Redirect examination by Mr. Estabrook:

Q. Did you notice the Hellenic Beach slow down at all? A. No, sir.

Mr. Estabrook: That is all.

Recross-examination by Mr. Dow:

Q. Excuse me, Mr. Mullner. That prompts one more question. If she would have slowed down or changed her speed at a distance of 2 miles, do you think you would have noticed it? A. Well, against the beach light, yes, you can tell after they leave the pilot off or on, you know, you got the lights on the beach, and it is like a silhouette, whatever you want to call it, and you can tell whether they are moving faster from the time they started, or after they left the pilot off.

Respondent's Exhibit G

Q. And after you heard those alarm whistles, series of blasts, wasn't it? A. Yes.

Q. Could you tell if there was a change of speed in the ships then? A. No, sir; I wouldn't. It just happened they collided right after that.

Mr. Dow: Thank you.

By Mr. Estabrook:

Q. There would have been plenty of room, wouldn't there, for the Hellenic Beach to have come between the lightship and the Exmouth? A. You mean coming out?

Q. Yes. A. Well, there was room all the way around, as far as that goes.

Mr. Estabrook: That is all.

A. (Continuing) This is where they hit; here is your shoals coming in here. You have got to go in here, and if you are any kind of a navigator, he knows what he has to do.

Mr. Dow: Thank you, sir.

(Witness excused.)

Respondent's Exhibit I

(Complaint)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SEAMAN'S ACTION

Plaintiff Demands a Trial by Jury

MIGUEL RIVERA,

Plaintiff,

against

AMERICAN EXPORT LINES, INC., and HELLENIC LINES, LTD.,

Defendant.

ACTION UNDER SPECIAL RULE FOR SEAMEN TO SUE WITHOUT SECURITY AND PRE-PAYMENT OF FEES FOR THE ENFORCEMENT OF LAWS OF THE UNITED STATES FOR THE PROTECTION OF HEALTH AND SAFETY AT SEA.

Plaintiff complaining of the defendants by his attorney, Herman E. Cooper, respectfully shows to this Court and alleges:

AS AND FOR A FIRST CAUSE OF ACTION AGAINST AMERICAN EXPORT LINES, INC., DEFENDANT.

First: Upon information and belief, that at all the times hereinafter mentioned, the defendant, American Export Lines, Inc. was and still is a corporation organized and existing under and by virtue of the laws of the State

Respondent's Exhibit 1

of New York or is duly licensed to do business in the State of New York and maintains an office for the transaction of business within the jurisdiction of this Honorable Court.

Second: That upon information and belief, at all the times hereinafter mentioned, the defendant, American Export Lines, Inc. owned, operated, controlled and managed a certain steamship known as the SS "Exmouth", which steamship is an American vessel flying the American flag.

Third: That the plaintiff, Miguel Rivera, was employed on board said vessel in the capacity of Able-Bodied Seaman on or about June 4, 1949, at an agreed rate of wages and said plaintiff, at all time hereinafter mentioned, was a member of the crew of said vessel SS Exmouth.

Fourth: That on or about June 5, 1949, at approximately 2:00 a. m. while said vessel SS Exmouth was underway near Overfalls Lightship proceeding from New York and bound for Philadelphia, said vessel collided with the SS Hellenic Beach, which vessel, upon information and belief, is owned, operated, controlled and managed by the defendant Hellenic Lines, Ltd.; that said collision between the SS Exmouth and the SS Hellenic Beach was the result of the concurrent negligence of the defendants herein, their officers, servants and employees aboard the said vessels SS Exmouth and SS Hellenic Beach, as more particularly hereinafter related, and as a result of said collision the plaintiff, Miguel Rivera, was caused to sustain and suffer serious personal injuries and damages, as hereinafter set forth.

Fifth: That the plaintiff's injuries were not caused by any neglect or want of care on his part, but solely and wholly by reason of the carelessness and negligence of the defendants herein and the negligence of the officers and

fellow seamen of the plaintiff on board the SS Exmouth and further by reason of the failure of the officers of the SS Exmouth and the SS Hellenic Beach to properly maneuver and navigate their respective vessels so as to avoid said collision.

Sixth: That on the 5th day of June, 1949, at approximately 2:00 A. M. while the SS Hellenic Beach was proceeding out to sea and was passing near Overfalls Lightship in or near Delaware Bay, and while the SS Exmouth was proceeding on its course toward Philadelphia, the said SS Hellenic Beach collided with the SS Exmouth, the bow of said SS Hellenic Beach striking the starboard side of the SS Exmouth approximately amidships and thereafter striking other portions of the starboard side of the SS Exmouth while going astern of the SS Exmouth; that as a result of said collision plaintiff was caused to suffer injuries more particularly hereinafter related; that said collision was the result of the carelessness and negligence of the defendants, American Export Lines, Inc., and Hellenic Lines, Ltd., and the officers and fellow seamen of the plaintiff on board the SS Exmouth and the officers and seamen on board the SS Hellenic Beach in failing to properly control, maneuver and navigate their respective vessels as they approached each other, so as to prevent said vessels from coming into collision with each other; that the officers and fellow seamen of the plaintiff on board the SS Exmouth failed to take the necessary steps and follow the necessary procedures in the navigation of said vessel as it approached the SS Hellenic Beach so as to properly swing the SS Exmouth or stop said vessel or reverse her engines in the time and space necessary to prevent said collision; that the officers in command of the SS Hellenic Beach failed to take the proper steps in the navigation of said vessel so as to avoid said collision; that on the aforesaid date when said collision occurred, the defendant,

Respondent's Exhibit 1

American Export Lines, Inc., failed to properly protect the plaintiff, Miguel Rivera, from suffering the injuries which he sustained as a result of said collision and failed to comply with the General Admiralty law, the statutes of the United States Government pertaining to the operation, management and control of steam vessels, steamship rules of the road and other administrative rules pertaining to the management of said vessel, SS Exmouth, and the navigation thereof, and further failed to comply with the duties and obligations owing to the plaintiff to protect him from the injuries which he sustained and to accord the plaintiff prompt medical care and attention, so as to mitigate and relieve the pain and suffering of the plaintiff, and the defendant, American Export Lines, Inc., failed to comply with the duties and obligations which it owed the plaintiff as a result of all of which plaintiff sustained serious injuries herein and was caused to sustain acute pain and suffering for a prolonged period of time as hereinafter set forth.

Seventh: That by reason of said collision between the aforesaid vessels at the time and place aforesaid, plaintiff suffered injuries to his head, face, body and limbs, including a dislocation of his right hip, injuries to his right knee and a rupture of the quadriceps muscle of his left thigh. As a result of said injuries, plaintiff has been sick, sore, lame and disabled since said collision and has been confined to a hospital for medical care and treatment. Plaintiff has been unable to work or attend to his usual duties as a result of said injuries, and upon information and belief, will never in the future be able to work in the same manner as he did prior to the time of said collision. As a result thereof, plaintiff's earning power will be seriously diminished, all to the damage of the plaintiff, as hereinafter set forth.

Respondent's Exhibit I

Further, plaintiff suffered and will continue to suffer great pain and agony from his injuries and was caused to suffer great pain and agony after said collision as the result of the failure upon the part of officers of the plaintiff on board the SS Exmouth to promptly and immediately summon medical aid, assistance and attention for the plaintiff after they had actual knowledge of the fact that plaintiff was injured in said collision.

Upon information and belief, plaintiff has been permanently injured and will be unable to resume his duties and occupation as a seaman in the American Merchant Marine.

Eighth: That at all times hereinafter mentioned, there was and still is in full force and effect, an Act of Congress binding upon the parties hereto, known as the United States Merchant Marine Act of 1920, Sec. 33, Act of June 5, 1920, Chap. 250, 41 Stat. at Large 1007, U. S. C. A. Title 46, Sec. 688, commonly known as the "Jones Act".

Ninth: That the plaintiff, Miguel Rivera, has been caused to suffer damages in the sum of One Hundred Fifty Thousand ($150,000.00) Dollars by reason of the injuries sustained as aforesaid.

As and for a second cause of action against American Export Lines, Inc., Defendant.

Tenth: Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "First", "Second", "Third", "Fourth", "Fifth", "Sixth", "Seventh", "Eighth" with the same force and effect as though fully set forth herein.

Eleventh: That upon information and belief, the plaintiff having become injured and ill as aforesaid, it was the duty of the defendant herein to furnish the plaintiff with

prompt medical care, attention and medicines, and to pay for the expenses of the plaintiff's maintenance and cure, and to pay him wages to the end of the voyage and for a time thereafter, for all of which the defendant is obligated by General Maritime Law.

Twelfth: That the defendant has failed and/or neglected and refused to pay to the plaintiff the wages, maintenance and cure hereinabove referred to in Paragraph "Eleventh" while the plaintiff has been incapacitated and the plaintiff has been, and upon information and belief will be incapacitated for a long period of time and as a result thereof, the sum which the defendant is obligated to pay to the plaintiff therefor, upon information and belief amounts to Twenty-five Thousand ($25,000.00) Dollars no part of which has been paid although duly demanded.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST HELLENIC LINES, LTD., DEFENDANT.

Thirteenth: Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "First", "Second", "Third", "Fourth", "Fifth", "Sixth", "Seventh", "Eighth" "Eleventh" and "Twelfth", with the same force and effect as though fully set forth herein.

Fourteenth: That upon information and belief, the defendant, Hellenic Lines, Ltd., is a foreign corporation maintaining an office for the transaction of business within the jurisdiction of this Honorable Court.

Fifteenth: That by reason thereof, diversity of citizenship exists between the plaintiff, Miguel Rivera, and the defendant, Hellenic Lines, Ltd.; that further, this is an action for a sum of money in excess of Three Thousand ($3,000.00) Dollars; that by reason of the premises, this Court has jurisdiction of the cause of action between the

plaintiff, Miguel Rivera, and the defendant, Hellenic Lines, Ltd.

Sixteenth: That plaintiff suffered injuries as hereinabove set forth as the result of the concurrent negligence of the defendants, American Export Lines, Inc., and Hellenic Lines, Ltd., and the failure of their respective officers on their respective vessels to properly navigate, maneuver and control the aforesaid vessels, thereby causing the collision hereinabove related.

Seventeenth: That by reason of the premises, herein, plaintiff suffered injuries and damages in the sum of One Hundred Fifty Thousand ($150,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants American Export Lines, Inc. and Hellenic Lines, Ltd. in the sum of One Hundred Fifty Thousand ($150,000.00) Dollars for his damages as aforesaid and the sum of Twenty-Five Thousand ($25,000.00) Dollars for his wages, maintenance and cure, making in all a total sum of One Hundred Seventy-Five Thousand ($175,000.00) Dollars, together with the costs and disbursements of this action.

HERMAN E. COOPER
Attorney for Plaintiff
Office & P. O. Address
32 Broadway
Borough of Manhattan
City of New York

IRWIN ASOFSKY and
BERNARD ROLNICK, of Counsel

Respondent's Exhibit I

(Answer of American Export Lines)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civ. 53-207

———o———

MIGUEL RIVERA,

Plaintiff,

against

AMERICAN EXPORT LINES, INC., and HELLENIC LINES, LTD.,

Defendants.

———o———

Defendant, American Export Lines, Inc., by Haight, Deming, Gardner, Poor & Havens, its attorneys, answering the complaint of the plaintiff herein, alleges upon information and belief:

ANSWERING THE FIRST CAUSE OF ACTION AGAINST AMERICAN EXPORT LINES, INC.:

First: Admits the allegations contained in paragraphs First and Third of the complaint.

Second: Denies each and every allegation contained in paragraphs Fourth, Fifth, Sixth, Seventh and Ninth of the complaint.

Third: Admits that at all the times mentioned in the complaint, the defendant, American Export Lines, Inc., owned and managed the s/s Exmouth, which steamship is and was an American vessel flying the American flag, but except as so specifically admitted, denies each and every

allegation contained in paragraph Second of the complaint.

Fourth: Admits that at all the times mentioned in the complaint, there was and still is in full force and effect an Act of Congress known as the United States Merchant Marine Act of 1920, Sec. 33, Act of June 5, 1920, Chapter 250, 14 Stat. at Large 1007, U. S. C. A. Title 46, Sec. 288, commonly known as the "Jones Act," but except as so specifically admitted, denies each and every allegation contained in paragraph Eighth of the complaint.

ANSWERING THE SECOND CAUSE OF ACTION AGAINST AMERICAN EXPORT LINES, INC.:

Fifth: Defendant, American Export Lines, Inc., repeats and realleges each and every admission, denial and denial of knowledge or information hereinabove set forth with the same force and effect as if herein repeated and set forth at length.

Sixth: Denies each and every allegation contained in paragraphs Eleventh and Twelfth of the complaint.

ANSWERING THE FIRST CAUSE OF ACTION AGAINST HELLENIC LINES, INC.:

Seventh: Defendant, American Export Lines, Inc., repeats and realleges each and every admission, denial and denial of knowledge or information hereinabove set forth with the same force and effect as if herein repeated and set forth at length.

Eighth: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs Fourteenth and Fifteenth of the complaint.

Respondent's Exhibit 1

Ninth: Answering paragraph Sixteenth of the complaint, denies any negligence or failure on the part of American Export Lines, Inc.

Tenth: Denies each and every allegation contained in paragraph Seventeenth of the complaint.

FURTHER ANSWERING THE COMPLAINT AND FOR A FIRST, SEPARATE, PARTIAL AND COMPLETE DEFENSE, DEFENDANT, AMERICAN EXPORT LINES, INC., ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

Eleventh: That if plaintiff, Miguel Rivera, suffered any injuries, the same were caused or contributed to by the negligence of said plaintiff.

FURTHER ANSWERING THE COMPLAINT AND FOR A SECOND, SEPARATE, PARTIAL AND COMPLETE DEFENSE, DEFENDANT, AMERICAN EXPORT LINES, INC., ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

Twelfth: That if the plaintiff, Miguel Rivera, suffered any damage herein and is entitled to any recovery against American Export Lines, Inc., by reason of the matters alleged in the complaint, which liability defendant, American Export Lines, Inc., denies, it is by reason of the fault and neglect of defendant, Hellenic Lines, Ltd., its agents, servants and employees, and if any liability for such damage should be adjudged against defendant, American Export Lines, Inc., the defendant, American Export Lines, Inc., would be entitled to indemnity from said defendant, Hellenic Lines, Ltd., and all liability should be borne by said Hellenic Lines, Ltd., instead of defendant, American Export Lines, Inc.

Respondent's Exhibit I

WHEREFORE, defendant, American Export Lines, Inc., demands judgment dismissing the complaint herein as against American Export Lines, Inc., together with the costs and disbursements of this action.

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for defendant, American Export Lines, Inc.

By JAMES M. ESTABROOK,
A member of the firm,
80 Broad Street,
New York 4, N. Y.

INTERROGATORY PROPOUNDED TO PLAINTIFF WHICH HE IS REQUIRED TO ANSWER IN WRITING AND UNDER OATH:

1. Give the names of those persons present at the time and place you were injured.

Respondent's Exhibit I

(Answer of Hellenic Lines, Ltd.)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

———o———

MIGUEL RIVERA,

Plaintiff,

against

AMERICAN EXPORT LINES, INC., and HELLENIC LINES, LTD.,

Defendants.

———o———

Defendant, Hellenic Lines, Ltd. by Dow & Symmers, its attorneys answering the complaint of the plaintiff herein alleges upon information and belief:

ANSWERING THE FIRST CAUSE OF ACTION AGAINST AMERICAN EXPORT LINES, INC., DEFENDANT DENIES:

First: Denies any knowledge or information sufficient to form a belief as to the allegations contained in Articles First, Second and Third of the complaint.

Second: Answering the Fourth Paragraph of the complaint, denies any negligence or failure on the part of Hellenic Lines, Ltd.

Third: Answering the Fifth Paragraph of the complaint, denies any negligence or carelessness on the part of the officers of the SS Hellenic Beach.

Fourth: Answering the Sixth Paragraph of the complaint, denies any carelessness or negligence on the part of the officers and seamen on board the SS Hellenic Beach.

Respondent's Exhibit I

Fifth: Denies each and every allegation contained in Paragraph Seventh of the complaint.

Sixth: Admits that at all the times mentioned in the complaint, there was and still is in full force and effect an Act of Congress known as the United States Merchant Marine Act of 1920, Sec. 33, Act of June 5, 1920, Chapter 250, 14 Stat. at Large 1007, U. S. C. A. Title 46, Sec. 288, commonly known as the "Jones Act," but except as so specifically admitted, denies each and every allegation contained in paragraph Eighth of the complaint.

Seventh: Denies each and every allegation contained in the Ninth Paragraph of the complaint.

ANSWERING THE SECOND CAUSE OF ACTION AGAINST AMERICAN EXPORT LINES, INC., DEFENDANT:

Eighth: Defendant, Hellenic Lines, Ltd., repeats and realleges each and every admission, denial and denial of knowledge or information hereinabove set forth with the same force and effect as if herein repeated and set forth at length.

Ninth: Denies each and every allegation contained in Paragraphs Eleventh and Twelfth of the complaint.

ANSWERING THE FIRST CAUSE OF ACTION AGAINST HELLENIC LINES, LTD.:

Tenth: Defendant, Hellenic Lines, Ltd., repeats and realleges each and every admission, denial and denial of knowledge or information hereinabove set forth with the same force and effect as if herein repeated and set forth at length.

Respondent's Exhibit I

Eleventh: Admit the allegations contained in Paragraph Fourteenth of the complaint.

Twelfth: Admit the allegations contained in Paragraph Fifteenth of the complaint.

Thirteenth: Answering paragraph Sixteenth of the complaint, denies any negligence or failure on the part of Hellenic Lines, Ltd.

Fourteenth: Denies the allegations contained in Paragraph Seventeenth of the complaint.

FURTHER ANSWERING THE COMPLAINT AND FOR A FIRST, SEPARATE, PARTIAL AND COMPLETE DEFENSE, DEFENDANT, HELLENIC LINES, LTD., ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

Fifteenth: That if plaintiff, Miguel Rivera, suffered any injuries, the same were caused or contributed to by the negligence of said plaintiff.

FURTHER ANSWERING THE COMPLAINT AND FOR A SECOND, SEPARATE, PARTIAL AND COMPLETE DEFENSE, DEFENDANT, HELLENIC LINES, LTD., ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

Sixteenth: That if the plaintiff, Miguel Rivera, suffered any damage herein and is entitled to any recovery against Hellenic Lines, Ltd., by reason of the matters alleged in the complaint, which liability defendant, Hellenic Lines, Ltd., denies, it is by reason of the fault and neglect of defendant, American Export Lines, Inc., its agents, servants and employees, and if any liability for such damage should be adjudged against defendant, Hellenic Lines, Ltd.,

Respondent's Exhibit I

the defendant Hellenic Lines, Ltd., would be entitled to indemnity from said defendant, American Export Lines, Inc., and all liability should be borne by said American Export Lines, Inc., instead of defendant, Hellenic Lines, Ltd.

WHEREFORE, defendant, Hellenic Lines, Ltd., demands judgment dismissing the complaint herein as against Hellenic Lines, Ltd., together with the costs and disbursements of this action.

DOW & SYMMERS,
Attorneys for Defendant,
Hellenic Lines, Ltd.

By DAVID H. BATCHELDER, JR.,
A member of the firm,
70 Pine Street,
New York, N. Y.

Respondent's Exhibit I

(Judgment)

DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 53-207

Cal. No.

—o—

MIGUEL RIVERA,

Plaintiff,

against

AMERICAN EXPORT LINES, INC., and HELLENIC LINES, LTD.,

Defendants.

—o—

The issues in the above entitled action having been brought on regularly for trial before the Hon. Edward Weinfeld and a jury, on April 25-28-29-30 & May 1, 1952, and the jury having rendered a verdict in favor of the plaintiff, for $90,000.— and the Court having granted the plaintiff $5110.— for Maintenance and Cure,

ADJUDGED: That the plaintiff have judgment against the defendants for the sum of $95,110.00.

Dated, New York, May 2nd, 1952.

WILLIAM V. CONNELL,
Clerk.

O'G

May 16, 1952—

Plaintiff's costs taxed @ $68.50.

WILLIAM V. CONNELL,
Clerk.

O'G

(SEAL)

See Stip. and Order clarifying judgment.

O'G

Respondent's Exhibit I

(Docket Entries)

At a Slated Term of the United States District Court for the Southern District of New York, held in the United States Court House in the Borough of Manhattan, City of New York on the 25th day of April in the year of our Lord, One Thousand Nine Hundred and Fifty-two.

Present:

HONORABLE EDWARD WEINFELD,
District Judge.

Docket No. Civ. 53-207

———o———

MIGUEL RIVERA,

Plaintiff,

vs:

AMERICAN EXPORT LINES, INC., and HELLENIC LINES, LTD.,

Defendants.

———o———

Now comes the Plaintiff by Herman E. Cooper, Esq., by (Herbert J. De Varco and Bernard Rolnick, of counsel) and moves the trial of this cause. Likewise comes the Defendant by Haight, Deming, Gardner, Poor & Havens, Esqs., by (James M. Estabrook, Walter A. Darby, Jr., of

Respondent's Exhibit 1

counsel), Attys. for Deft. Amer. Export Lines, Inc., Dow & Symmers, Esqs., by (William E. Dow, Jr., of counsel), Attys. for Deft. Hellenic Lines, Ltd.

Thereupon a Jury is duly empaneled and sworn, and the cause proceeds to Trial.

Opening Statements by opposing counsel—Testimony for Plaintiff—Depositions of Stylianos Macris—Dmetrios Legakis, Nicholas Zaecas, Christos Stefanides, Anthony Spithas and Anthony Theotocatos read into the record.

Apr 28 1952—Trial continued.

Apr 29 1952— " " —Plaintiff moves to have the question of "Maintenance and Cure" determined by the Court and not by the Jury—Motion granted—Plaintiff rests—Deft. Amer. Export Lines Inc. moves to dismiss—Deft. Hellenic Lines Ltd. moves to dismiss the case as against itself—Both motions denied—Testimony for Defendants.

Apr 30 1952—Trial continued—Deft. American Export Lines rest—Testimony for Deft. Hellenic Lines (Excerpts from deposition of 3rd Mate Bernard E. Giffin) read.

May 1 1952—Trial continued—Deft. Hellenic Lines rests—Plaintiff rests—All parties rest—Deft. Amer. Export Lines moves to dismiss the complaint and in the alternative moves for a mistrial and a new trial—Motion denied.

Summation—Officers sworn—Jurors retire at 3:20 P. M. and begin deliberations—At 8:55 P. M. the Jurors return a *verdict* for the Plaintiff in the sum of *$90,000.00* against both defendants—Jury polled—Verdict unanimous—

Respondent's Exhibit I

Deft. Hellenic Lines, Ltd. moves to set verdict aside—Motion denied—"*Maintenance and Cure*" *awarded in the amount of $5110.00.*

(An Extract of the Minutes)

WILLIAM V. CONNELL,
Clerk.

O'G

(SEAL)

(Amended Judgment)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civ. No. 53-207

—o—

MIGUEL RIVERA,

Plaintiff,

against

AMERICAN EXPORT LINES, INC., and HELLENIC LINES, LTD.,
Defendants.

—o—

On the subjoined consent of the attorneys for the respective parties herein, the Clerk is hereby directed to enter an amended judgment *nunc pro tunc* as of May 2, 1952, reading as follows:

Respondent's Exhibit 1

"DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 53-207

Cal. No.

———o———

MIGUEL RIVERA,

Plaintiff,

against

AMERICAN EXPORT LINES, INC., and
HELLENIC LINES, LTD.,

Defendants.

———o———

The issues in the above entitled action having been brought on regularly for trial before the Hon. Edward Weinfeld and a jury, on April 25-28-29-30 & May 1, 1952, and the jury having rendered a verdict in favor of the plaintiff for $90,000.00 against both defendants, and the Court having granted the plaintiff $5,110.00 against defendant American Export Lines, Inc. for maintenance and cure, it is

ADJUDGED that the plaintiff have judgment against both defendants for the sum of $90,000.00 on the first causes of action and for the further sum of $5,110.00 against defendant American Export Lines, Inc. on the second cause of action.

Dated, New York, May 2, 1952.

WILLIAM V. CONNELL
Clerk.

HERMAN E. COOPER
Herman E. Cooper,
Attorney for Plaintiff.

Respondent's Exhibit I

Without prejudice to the right of defendants to apppeal from the above judgment.

HAIGHT, DEMING, GARDNER, POOR & HAVENS
Haight, Deming, Gardner, Poor & Havens
Attorneys for Defendant, American Export Lines, Inc.

DOW & SYMMERS
Dow & Symmers,
Attorneys for Defendant, Hellenic Lines, Ltd.

SO ORDERED:

EDWARD WEINFELD,
U. S. D. J."

May 19 1952

W O'C

O'G

RESPONDENT'S EXHIBIT P

(p. 139a)

70 Answering Philadelphia June 4 P.M. 1949

Average — C PS
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Bells	Time	BELLS	TIME
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III	10. 11		
L	10. 12		
X	10 14		
LI	10. 14		
X	10. 15		
F. W. E.	10. 22		

C. 70088390
M. 0674650
SS 17'7"
PS. 22' 4"

AT ANCHORAGE
June 5th 1949 A.M.
STD. BY - 1:42 ~~P.M.~~ A.M.

X	10. 09	
III	10. 11	
L	10. 12	
X	10 14	
LI	10. 14	
X	10. 15	
F. W. E.	10. 22	

C. 70088390
M. 0674650
SS 17'7"
PS. 22' 4"

AT ANCHORAGE
June 5th 1949 A.M.
STD. BY - 1:42 ~~P.M.~~ A.M.

C- 70088530
M- 0675040
P.S. 22'4"
S.S. 17'2"

L	1 50	
LI	1 51	
X	05	

R-P

Respondent's Exhibit J

Exmouth rough bridge log.

(See opposite ☛)

Note

Page 131a is on Card 10

Respondent's Exhibit K

Exmouth bridge bell book.

(See opposite ☛)

RESPONDENT'S EXHIBIT K

(page 133a)

2	41	44 Pilot away
	42	Departure
8	31	S.B.E. Log getting in
8	36	4 Thick fog
9	09	4 S.B.E. 4 of them
9	34	4
9	37	4 S.B.E.
10	09	4 X
10	11	4
10	12	4
10	14	X 4
10	15	X Dropped anchor
		3 shackles in water
10	22	F.W.P.
A.M.		JUNE 5, 1949
1	42	SBE Commenced to anchor
	50	4
	51	44 Secured
2	05	Collision ⊗

3	00	Commence heaving #4 A
3	00	Let go Stbd. I
		Lookout: QUIGLEY
		Wheel: WHITNEY
3	20	Storeroom & Refridgerator rooms secured.

Respondent's Exhibit M

ABSTRACT FROM CLINICAL RECORD

Register No. 204667 Date abstracted July 7, 1949

1. Regnar F. Eklund
2. 43-30—48th St., N. Y. (L. I.)
3. A.S.
4. 9-19-1891
5. SS Exmouth Amer. Export.
6. Hospital care furnished from June 13, 1949 to June 24, 1949. Outpatient care furnished from
7. Number of days disabled: (a) Partially
   (b) Totally During hospital stay.
8. HISTORY SUMMARY including patient's statement as to how and when disability incurred: The attached Discharge Summary is to be used in lieu of a Clinical Abstract.
9. EXAMINATION SUMMARY including pertinent laboratory data and X-ray findings:
10. DIAGNOSIS: 1. Concussion of brain
    2. Anxiety state.
11. CONDITION UPON DISCHARGE including reason for discharge: Improved.
12. REMARKS:

.....
Bengt Hamilton
Medical Director, USPHS (or)
Clinical Director

Station—U. S. Marine Hospital
Location .....

Respondent's Exhibit M

6/13/49 6/24/49

Patient is a 57 year old white AS who was admitted to Neurological Service on 6/13/49. While aboard ship on 6/8/49, during a fog the ship was involved in a collision with another ship and the patient was thrown against the bulkhead striking his head and right side of the body. He states he was unconscious for about half a minute, and subsequently was dizzy and confused. However, patient was able to ambulate and return to his home for bedrest. He subsequently developed very severe headaches in the occipital region and left temporal region, 2 days after the accident and also developed uncontrollable tremors of the arms and legs. These seemed to be worse on the right side. On reaching for object patient also had an intention tremor. There are no visual disturbances. The patient apparently felt that he was confused and dazed. There was some difficulty in walking because of the persistent dizziness which was of the subjective type. The headache was continuous, dull, aching in type and did not radiate. Because of the persistence of these symptoms patient was subsequently admitted to the hospital 6/14/49.

Examination on admission revealed the patient to be very apprehensive and anxious and had a very obvious course intention tremor.

Laboratory and touch sensation were intact but there was some weakness of the upper and lower right extremities. X-rays of the skull and lumbo-sacral spine were essentialiy negative. On 6/20/49 patient was seen in Neurosurgical Consultation and it was noted that the above described tremors had improved. Cranial nerves were intact, there was no nystagmus. There was a tremor however of the tongue, both hands and lower extremities. All the deep tendon reflexes were equal and normal and there were no pathological reflexes noted. Sensation was intact through-

Respondent's Exhibit M

out. There was mild tremor at rest and also intention tremor. Ataxia was also noted and patient had adiadokokinesis. Impression by the Neuro-surgical Consultant was that patient probably had an anxiety state and also some mild diffuse degenerative lesion of the cerebellum and extrapyramidal system. On 6/21/49 patient was transferred to the Surgical Service because of the persistence of headaches, dizziness, tremors, etc. Patient received sedation and psycho-therapy and was reassured on frequent and numerous occasions. There was a marked improvement on this regime. The tremors rapidly subsided, patient's tense and apprehensive state also subsided.

Remaineder of hospital stay was essentially uneventful.

Discharged: 6/24/49

Condition: Improved

Prognosis: Good, 2 weeks convalescence

Diagnosis: 1. Concussion of brain
2. Anxiety state.

DR. P. ZITO

JT
Eklund, Regnar 204667 AB-1

Respondent's Exhibit O

Photograph of Exmouth collision damage.

(See opposite ☛)

Note

Page 137a is on
Card 10

Respondent's Exhibit P

Exmouth engine room bell book.

(See opposite ☛)

Log of the S. S. EXMOUTH

(Page 131a – last) from Tacoma to Kiu ... to Hilo via Honolulu (p. 131a-last c) Date Sunday JUN 5 1949

HOUR	LOG	COURSE Stand	COURSE Steering	WIND Direct	WIND Force	BAROMETER	TEMPERATURE Air	TEMPERATURE Water	STAND. COMP. Var.	STAND. COMP. Dev.	R. P. M.
A. M. 1											
2											
3											
4		at anchor		S'ly	1	29.92	65°				
5											
6											
7											
8		at anchor		Calm		29.90	67				
9											
10											
11											
12		At Anchor		S'ly	1-2	29.89	74				

LATITUDE	LONGITUDE	COURSE	LENGTH DAY	DISTANCE OBS.	DISTANCE D. R.	DISTANCE TOTAL	AT SEA	AVGE. SPEED

HOUR	LOG	COURSE Stand	COURSE Steering	WIND Direct	WIND Force	BAROMETER	TEMPERATURE Air	TEMPERATURE Water	STAND. COMP. Var.	STAND. COMP. Dev.	R. P. M.
P. M. 1											
2											
3											
4	048	0	036°	SSE	1-2	29.81	71°				
5											
6											
7											
8	038			S'ly	1	29.80	68				
9 19	030		022								
10 41	360		352								
11 25	002		354								
12	002		354	SE	1	29.77	66				

RUNNING LIGHTS	TANKS No.	TANKS A.M.	TANKS P.M.	BILGES No.	BILGES A.M.	BILGES P.M.	WHEEL Hours	WHEEL Name	LOOKOUT Name
Burning									
Midnight to 205 A.M.					0		12-2	Rivera	Whitney, Buckley
Sunset P.M. to Midnight					2		2-4	Fehlner	Quigley
Other Lights					0		4-6	Kilgman	Morgator
Deck anchor lights						0	6-8	Morgator	Kilgman
							8-10	Burdny	Lugo & Teixeira
					0		10-12	Lugo & Teixeira	Burdny
						0	12-2	Fehlner	Quigley
						0	2-4	Whitney	Buckley
							4-8	Kilgman	Morgator & Burdny
							8-10	Lugo & Teixeira	Lugo & Burdny
							10-12	Burdny	Teixeira

REMARKS

1442 S.B.E. Fog dispersed, Commenced heaving anchor 1451 Anchor aweigh, full speed - various courses to Pilot Station 2200 anemometer 4/0 @ Sdld. side close by SEE SUPPLEMENTARY PAGE.

405 Coast Guard in and outbound. 427 Tested steering apparatus - all found in working order. 435 Pilot 4 N.M. S.W. - Smooth sea. 455 Coast Guard turned away, with injured seamen M. Rivera - A.B. and C. Carlson - Ward's sea. Engineers ballasting ship and preparing awaiting fog to lift. - Dense fog. Fog signals sounded & extra lookout posted. Calm sea. F.O.C.

Vessel at anchor due to dense fog. Fog signals sounded
1200 Overcast, dense fog, smooth sea. Swell S.E. swell P.C.C.

SET & DRIFT	STEAM—LBS.	REV. PER MIN.	FUEL CONSUMED	FUEL PER KNOT	FUEL REMAINING	DIST. BY ENG.	ENG. KNOTS per HR.	PROPELLER SLIP

1249 Pilot away. 148 S.B.E. fog lifting, commence heaving anchor 204 Anchor aweigh 205 S.B.E. fog - all precautions observed. 220 Let go port anchor 232 F.W.E. 256 S.E.E. fog clearing, commence heaving anchor 321 Anchor aweigh, full speed 4/0 081°T 1748 Departure, buoy-tender 4/0 @ 324 MC Chic Shoal buoy @ 4/0 048°T. Partly cloudy. Slight SE'ly sea, Low swell. F.O.C.

408 Buoy "3FB" abeam close to @ 4/0 to 038° 542 fog setting in @ S.B.E. 546 half speed. 554 Stop engines 562 Let go port anchor 3 shackles in 10 fathoms water. 725 Fog lifting 732 S.B.E. & start heaving up anchor. 740 Anchor aweigh 745 Full ahead. Overcast - good visibility. Slight SE sea & swell. F.O.C.

806½ S.B.E. Fog setting in 807 Stop Vane bells in anchoring 812 Let go Port anchor 3 Shackles 912 in 10 fathoms 856 Fog clearing 905 Commenced heaving in anchor 910½ Anchor aweigh full speed 912 Brigantine Stratmore W/C 300 3rd 1627 S.B.E. Log reduced 1040 Fog Gantt Full 1710 Barnegat Lt. W/A Course for Hilo A.C. C/C 360° 3rd 1200 Partly Cloudy, Slight SE sea & swell. P.C.C.

DRINKING WATER Tank	Last Filled	Inches	Long Tons	REFRIGERATION Compartment	Temperature

HOLD TEMPERATURES

	1	2	3	4	5	6	7
A. M.							
4							
8							
12							
P. M.							
4							
8							
12							

Chief Officer.

R. Eklund Master.

SUPPLEMENTARY PAGE
FOR JUNE 5, 1949

(Page 131a - Part 3)

to _____ Date _____

REMARKS

2.00 from Overfalls L/V abm. stbd. side steering by. While proceeding to Pilot Station, and vessel being maneuvered by Master, to pick up pilot, an unknown vessel which had been reported to the bridge a few minutes previously, was found to be rapidly bearing down upon us on our starboard bow. As soon as the danger of collision was recognized, danger signals were blown, and maneuvers made to avoid collision.

At 2.05 A.M. the unknown vessel struck our stbd. side at the after end of the amidships house with her bow and bounced off, striking the bulwark aft. A stop bell was given immediately and the crew was mustered at boat stations while extent of damage was being ascertained. The unknown vessel failed to stop and identify herself, or to offer any assistance.

The anchor was dropped. The vessel's lighting went out and was restored in a very few minutes. First aid treatment was given to

SET & DRIFT	STEAM—LBS.	REV. PER MIN.	FUEL CONSUMED	FUEL PER KNOT	FUEL REMAINING	DIST. BY ENG.	ENG. KNOTS per HR.	PROPELLER SLIP
The injured crew members who were later removed to shore by Lewis Station Coast Guard Launch. RCH.								

R E Eklund

Bilge Soundings

	#4P	#4S	#5
9 00 PM	0	2½	0
10 00 PM	6'	0	0
11 00 PM	6'	0	0
12 00 Noon	6'	0	0
1 00 PM	6'	0	0
2 00 PM	6'	0	0
3 00 PM	6'	0	0
4 00 PM	6'	0	0
5 00 PM	6'	0	0
6 00 PM	6'	0	0

DRINKING WATER				REFRIGERATION					HOLD TEMPERATURES									
Tank	Last Filled	Inches	Long Tons	Compartment	Temperature					1	2	3	4	5	6	7		

2 00 PM	6'	0	0
3 00 PM	6'	0	0
4 00 PM	6'	0	0
5 00 PM	6'	0	0
6 00 PM	6'	0	0

DRINKING WATER				REFRIGERATION					HOLD TEMPERATURES									
Tank	Last Filled	Inches	Long Tons	Compartment	Temperature					1	2	3	4	5	6	7		
									A. M.									
									4									
									8									
									12									
									P. M.									
									4									
									8									
									12									

Chief Officer. *Master*